Laws 1999
First Regular Session, Forty-Fourth Legislature

CERTIFICATE OF AUTHENTICATION

STATE OF NEW MEXICO)

)SS:

OFFICE OF THE SECRETARY OF STATE)

I, REBECCA VIGIL-GIRON, Secretary of State of the State of New Mexico, do hereby certify that the printed laws contained herein are true and correct copies of the **ENROLLED AND ENGROSSED LAWS** that were passed by the Forty-Fourth State Legislature of New Mexico at its First Regular Session, which convened on the 19th day of January, 1999, and adjourned on the 20th day of March, 1999, in Santa Fe, the Capital of the State, as said copies appear on file in my office.

I further certify that in preparing the following laws for publication, the texts of the **ORIGINAL ENROLLED AND ENGROSSED ACTS** have been photographically reproduced without changes and that any errors must be attributed to the original, as certified by the Enrolling and Engrossing and Judiciary Committees of the Forty-Fourth State Legislature of the State of New Mexico, First Regular Session.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of New Mexico.

Done in the City of Santa Fe, the
State Capital, this 20th day of April,

1999.

Rebecca Vigil-Giron
Secretary of State

CONSTITUTIONAL AMENDMENT 1

PROPOSING AN AMENDMENT TO ARTICLE 10 OF THE CONSTITUTION OF NEW MEXICO TO PERMIT BERNALILLO COUNTY TO BECOME AN URBAN COUNTY WITH ALL GOVERNMENTAL POWERS THAT ARE NOT EXPRESSLY DENIED BY LAW AND TO FURTHER PERMIT BERNALILLO COUNTY AND INCORPORATED MUNICIPALITIES WITHIN BERNALILLO COUNTY TO CHOOSE TO BE GOVERNED BY A SINGLE URBAN COUNTY GOVERNMENT.

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

Section 1. It is proposed to amend Article 10 of the constitution of New Mexico by adding a new section to read:

"A. A county that is less than one thousand five hundred square miles in area and has, at the time of this amendment, a population of three hundred thousand or more may become an urban county by the following procedure:

(1) the board of county commissioners shall, by January 1, 2001, appoint a charter commission consisting of not less than three persons to draft a proposed urban county charter;

(2) the proposed charter shall provide for the form and organization of the urban county government and shall designate those officers that shall be elected and those officers and employees that shall perform the duties assigned by law to county officers; and

(3) within one year after the appointment of the charter commission, the proposed charter shall be submitted to the qualified voters of the county and, if adopted by a majority of those voters, the county shall become an urban county. If, at the election or any subsequent election, the proposed charter is not adopted, then, after at least one year has elapsed after the election, pursuant to this section another charter commission may be appointed and another proposed charter may be submitted to the qualified voters for approval or disapproval.

B. An urban county may exercise all legislative powers and perform all governmental functions not expressly denied to municipalities, counties or urban counties by general law or charter and may exercise all powers and shall be subject to all limitations granted to municipalities by Article 9, Section 12 of the constitution of New Mexico. This grant of powers shall not include the power to enact private or civil laws except as incident to the exercise of an independent municipal power, nor shall it include the power to provide for a penalty greater than the penalty provided for a misdemeanor. No tax imposed by the governing body of an urban county, except a tax authorized by general law, shall become effective until approved by a majority vote in the urban county.

C. A charter of an urban county shall only be amended in accordance with the provisions of the charter.

D. If the charter of an urban county provides for a governing body composed of members elected by districts, a member representing a district shall be a resident and elected by the registered qualified electors of that district.

E. The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of urban counties.

F. The provisions of this section shall be self-executing."

Section 2. It is proposed to amend Article 10 of the constitution of New Mexico by adding a new section to read:

"A. A county that is less than one thousand five hundred square miles in area and has, at the time of this amendment, a population of three hundred thousand or more, and whether or not it is an urban county pursuant to Section 1 of this amendment, may provide for a single urban government by the following procedure:

(1) by January 1, 2003, a charter commission, composed of eleven members, shall be appointed to draft a proposed charter. Five members shall be appointed by the governing body of the county, five members shall be appointed by the municipality with a population greater than three hundred thousand and one member shall be appointed by the other ten members;

(2) the proposed charter shall:

(a) provide for the form and organization of the single urban government;

(b) designate those officers that shall be elected and those officers and employees that shall perform the duties assigned by law to county officers;

(c) provide for a transition period for elected county and city officials whose terms have not expired on the effective date of the charter; and

(d) provide for a transition period, no less than one year, to ensure the continuation of government services; and

(3) within one year after the appointment of the charter commission, the proposed charter shall be submitted to the qualified voters and, if adopted by a majority of those voters, the municipalities in that county with a population greater than ten thousand shall be disincorporated and the county shall be governed by a single urban government. If the proposed charter is not adopted by a majority of the qualified voters, then another charter commission shall be appointed and another election, within twelve months of the previous election, shall be held. If the proposed charter is not adopted by a majority of the qualified voters at the second or any subsequent election, then after at least two years have elapsed after the election, pursuant to this section another charter commission may be appointed and another proposed charter may be submitted to the qualified voters for approval or disapproval. As used in this paragraph, "qualified voter" means a registered voter of the county.

B. Upon the adoption of a charter pursuant to Subsection A of this section, any municipality within the county with a population greater than ten thousand is disincorporated and no future municipalities shall be incorporated. A county that adopts a charter pursuant to this section may exercise those powers granted to urban counties by Section 1 of this amendment and is subject to the limitations imposed upon urban counties by that section. A county that adopts a charter pursuant to this section has the

same power to enact taxes as any other county and as any municipality had before being disincorporated pursuant to this section.

C. A municipality, with a population of ten thousand or less, in a county that has adopted a charter pursuant to this section may become a part of the single urban government by a vote of a majority of the qualified voters within the municipality voting in an election held upon the filing of a petition containing the signatures of ten percent of the registered voters of that municipality. If a majority of the voters elect to become a part of the single urban government, then the municipality is disincorporated.

D. All property, debts, employees, records and contracts of a municipality disincorporated pursuant to this section shall be transferred to the county and become the property, debts, employees, records and contracts of the county. The rights of a municipality, disincorporated pursuant to this section, to receive taxes, fees, distributions or any other thing of value shall be transferred to the county. Any law granting any power or authorizing any distribution to a municipality disincorporated pursuant to this section shall be interpreted as granting the power or authorizing the distribution to the county.

E. The provisions of this section shall be self-executing."

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

SENATE JOINT RESOLUTION 26, AS AMENDED

CONSTITUTIONAL AMENDMENT 2

PROPOSING AN AMENDMENT TO ARTICLE 10, SECTION 2 OF THE CONSTITUTION OF NEW MEXICO TO ELIMINATE TERM LIMITS FOR COUNTY ELECTED OFFICIALS.

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

Section 1. It is proposed to amend Article 10, Section 2 of the constitution of New Mexico to read:

"A. In every county all elected officials shall serve four-year terms, subject to the provisions of Subsection B of this section.

B. In those counties that prior to 1992 have not had four-year terms for elected officials, the assessor, sheriff and probate judge shall be elected to four-year terms and the treasurer and clerk shall be elected to two-year terms in the first election following the adoption of this amendment. In subsequent elections, the treasurer and clerk shall be elected to four-year terms.

C. To provide for staggered county commission terms, in counties with three county commissioners, the terms of no more than two commissioners shall expire in the same year; and in counties with five county commissioners, the terms of no more than three commissioners shall expire in the same year.

D. The number of terms that elected county officials may serve shall be unlimited."

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

SENATE JOINT RESOLUTION 9, AS AMENDED

CHAPTER 1

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-FOURTH LEGISLATURE, FIRST SESSION, 1999 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

Section 1. There is appropriated for the expense of the legislative department of the state of New Mexico for the forty-fourth legislature, first session, for per diem and mileage of the members, for salaries of employees and for other expenses of the legislature, the sum of six million three hundred four thousand three hundred twenty-four dollars ($6,304,324) or so much thereof as may be necessary for such purposes.

Chapter 1 Section 2

Section 2. The expenditures referred to in Section 1 of this act are as follows:

A. per diem for senators ---------- $312,480;

B. per diem for members of the house of representatives -- $520,800;

C. mileage traveled by members of the senate going to and returning from the seat of government by the usually traveled route, one round trip ------------------------ $4,068;

D. mileage traveled by members of the house of representatives going to and returning from the seat of government by the usually traveled route, one round trip --------------------------------------- $6,300;

E. salaries and employee benefits of senate employees --- $1,754,272;

F. salaries and employee benefits of house of representatives employees --------------------- $1,873,420;

G. for expense of the senate not itemized above, four hundred fifty thousand six hundred four dollars ($450,604). No part of this item may be transferred to salaries or employee benefits;

H. for expense of the house of representatives not itemized above, four hundred thirty-four thousand eighty dollars ($434,080). No part of this item may be transferred to salaries or employee benefits;

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

J. for session expenses of the legislative council service, the joint billroom and mailroom and joint legislative switchboard, nine hundred forty-eight thousand three hundred dollars ($948,300) to be disbursed upon vouchers signed by the director of the legislative council service. Following adjournment of the session, expenditures authorized under Subsections E through H of this section shall be disbursed upon vouchers signed by the director of the legislative council service.

Chapter 1 Section 3

Section 3. Computers purchased by the legislature are to be placed in the custody of the legislative council service by the chief clerks of the respective houses as soon after the session as practicable. Computers used for two consecutive regular sessions and not needed for legislative use may be offered for resale to state agencies, public officials, public institutions and local public bodies at a price found to be the fair market price by the New Mexico legislative council, and the proceeds shall be deposited in the legislative information system fund.

Chapter 1 Section 4

Section 4. Under the printing contracts entered into for the forty-fourth legislature, first session, the chairman of the committees' committee of the senate, subject to the approval of the committee, and the speaker of the house of representatives are authorized and directed to provide for the printing of all bills, resolutions, joint

resolutions, memorials and joint memorials introduced in the senate or house, the printing of the weekly bill locator and the printing of all necessary stationery required for use in the respective houses. They are further directed to provide for the purchase of all supplies necessary for use in the respective houses within the appropriation provided. The orders for printing, stationery and supplies shall be approved by the chairman of the committees' committee in the senate or by the speaker of the house.

Chapter 1 Section 5

Section 5. For the first session of the forty-fourth 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:

A. one copy to each member of the house of representatives and senate;

B. 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;

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

D. one copy to two other addresses specified by each individual member of the legislature.

Chapter 1 Section 6

Section 6. Any person not enumerated in Section 5 of this act may secure a complete file of the bills, resolutions, joint resolutions, memorials and joint memorials of the legislature by depositing with the legislative council service the amount of six hundred dollars ($600), which deposit shall be paid to the state treasurer to the credit of the legislative expense fund. Additional single copies of items of legislation shall be sold for one dollar ($1.00) unless the director of the legislative council service shall, because of its length, assign a higher price not to exceed ten cents ($.10) per page. Copies of a daily bill locator, other than those copies furnished each member of the respective houses, shall be supplied by the legislative council service at a charge of one hundred fifty dollars ($150) for the entire session.

Chapter 1 Section 7

Section 7. There is appropriated from the general fund to the legislative council service for fiscal year 2000 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service, the following:

A. Personal Services	$ 1,994,500
Employee Benefits	635,100
Travel	132,100
Maintenance & Repairs	23,600
Supplies & Materials	41,200
Contractual Services	202,900
Operating Costs	307,700
Other Operating Costs	250,000
Capital Outlay	87,500
Out-of-State Travel	111,000
Total	$ 3,785,600;

B. for travel expenses of legislators other than New Mexico legislative council members, on legislative council business, for committee travel, staff and other necessary expenses for other interim committees and for other necessary legislative expenses for fiscal year 2000, including the second year of the leadership staff pilot under the aegis of the legislative council, the sum of eight hundred eighty-six thousand dollars ($886,000) from the general fund and three hundred twenty-five thousand dollars ($325,000) from legislative council service cash balances; []

C. for pre-session expenditures and for necessary contracts, supplies and personnel for interim session preparation, the sum of three hundred fifty-two thousand three hundred dollars ($352,300); and

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

Chapter 1 Section 8

Section 8. There is appropriated from the general fund to the legislative finance committee for fiscal year 2000, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

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Travel	172,100
Maintenance & Repairs	18,400
Supplies & Materials	30,500
Contractual Services	167,000
Operating Costs	128,400

Capital Outlay	25,600
Out-of-State Travel	41,700
Other financing Sources	600

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Chapter 1 Section 9

Section 9. There is appropriated from the general fund to the legislative education study committee for fiscal year 2000, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, the following:

Personal Services	$ 467,800
Employee Benefits	128,900
Travel	70,000
Maintenance & Repairs	15,000
Supplies & Materials	14,500
Contractual Services	15,000
Operating Costs	19,000
Capital Outlay	14,700
Out-of-State Travel	12,000
Other financing uses	200
Total	$757,100.

Chapter 1 Section 10

Section 10. There is appropriated from the general fund to the legislative council service for the interim duties of the senate rules committee the sum of twenty-one thousand six hundred dollars ($21,600) for fiscal year 2000.

Chapter 1 Section 11

Section 11. There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2000 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	$201,500
Employee Benefits	66,300
Travel	1,900
Maintenance & Repairs	1,600
Supplies	1,000
Contractual Services	3,000
Operating Costs	3,900
Capital Outlay	14,000
Out-of-State Travel	16,500

Total	$ 309,700.

Chapter 1 Section 12

Section 12. There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2000 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	$ 201,900
Employee Benefits	66,509
Travel	2,100
Maintenance & Repairs	225
Supplies	1,000
Contractual Services	23,388
Operating Costs	3,920
Out-of-State Travel	11,472
Total	$ 310,514.

Chapter 1 Section 13

Section 13. There is appropriated from the general fund to the legislative council service for expenditure in fiscal years 2000 and 2001 for a legislative telephone system, the sum of six hundred twenty-five thousand two hundred dollars ($625,200).

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Chapter 1 Section 15

Section 15. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 1, AS AMENDED, WITH EMERGENCY CLAUSE

SIGNED JANUARY 28, 1999.

CHAPTER 2

RELATING TO CULTURAL AFFAIRS; MAKING THE ANDERSON-ABRUZZO INTERNATIONAL BALLOON MUSEUM THE OFFICIAL BALLOON MUSEUM OF NEW MEXICO.

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

Chapter 2 Section 1

Section 1. OFFICIAL BALLOON MUSEUM.--The Anderson-Abruzzo international balloon museum is the official balloon museum of New Mexico.

HOUSE BILL 100

CHAPTER 3

RELATING TO CULTURAL AFFAIRS; MAKING THE ANDERSON-ABRUZZO INTERNATIONAL BALLOON MUSEUM THE OFFICIAL BALLOON MUSEUM OF NEW MEXICO.

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

Chapter 3 Section 1

Section 1. OFFICIAL BALLOON MUSEUM.--The Anderson-Abruzzo international balloon museum is the official balloon museum of New Mexico.

SENATE BILL 100

CHAPTER 4

RELATING TO FINANCE; AMENDING THE NEW MEXICO FINANCE AUTHORITY ACT TO ALLOW FINANCING OF EMERGENCY PUBLIC PROJECTS FROM THE PUBLIC PROJECT REVOLVING FUND AND TO ADD TWO-YEAR POST-SECONDARY INSTITUTIONS TO THE DEFINITION OF QUALIFIED ENTITY; DECLARING AN EMERGENCY.

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

Chapter 4 Section 1

Section 1. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3, as amended) is amended to read:

"6-21-3. DEFINITIONS.--As used in the New Mexico Finance Authority Act:

A. "authority" means the New Mexico finance authority;

B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;

C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;

D. "emergency public project" means a public project:

(1) made necessary by an unforeseen occurrence or circumstance threatening the public health, safety or welfare; and

(2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;

E. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including land; buildings; water rights; water, sewerage and waste disposal systems; streets; airports; municipal utilities; parking facilities; and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire undertaking;

F. "qualified entity" means the state or an agency or institution of the state or a county, municipality, school district, two-year public post-secondary institution, land grant corporation, intercommunity water or natural gas supply association or corporation, special district or community water association or an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo; and

G. "security" or "securities", unless the context indicates otherwise, means bonds, notes or other evidence of indebtedness issued by a qualified entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with a qualified entity and that are payable from taxes, revenues, rates, charges, assessments or user fees or from the proceeds of funding or refunding bonds, notes or other evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity."

Chapter 4 Section 2

Section 2. A new section of the New Mexico Finance Authority Act is enacted to read:

"PUBLIC PROJECT REVOLVING FUND--EMERGENCY PUBLIC PROJECTS.--

A. Money on deposit in the public project revolving fund may be used to acquire securities or to make loans to qualified entities for emergency public projects. The amount of securities acquired from or the loan made to a qualified entity at any one time for any one emergency public project shall not exceed five hundred thousand dollars ($500,000). Emergency public projects are not required to obtain the specific authorization by law required in Sections 6-21-6 and 6-21-8 NMSA 1978; however, each emergency public project must be specifically designated as such by the authority prior to the acquisition of securities or the making of a loan to a qualified entity for the emergency public project. The aggregate amount of loans for emergency public projects that may be made by the authority in any one fiscal year may not exceed three million dollars ($3,000,000).

B. The provisions of this section shall be effective until June 30, 2002."

Chapter 4 Section 3

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

HOUSE BILL 17, AS AMENDED

SIGNED FEBRUARY 27, 1999

CHAPTER 5

RELATING TO STATE BUDGETS; ENACTING THE ACCOUNTABILITY IN GOVERNMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 5 Section 1

Section 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Accountability in Government Act".

Chapter 5 Section 2

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that agencies should:

(1) be granted sufficient statutory authority and flexibility to use their resources in the best possible way in order to better serve the citizens of New Mexico through the efficient delivery of services and products and the effective administration of governmental programs;

(2) be held accountable for the services and products they deliver in accordance with clearly defined missions, goals and objectives;

(3) develop performance measures for evaluating performance and assessing progress in achieving goals and objectives, and those measures should be integrated into the planning and budgeting process and maintained on an ongoing basis;

(4) have incentives to deliver services and products in the most efficient and effective manner and, if appropriate, recommend the restructuring of ineffective programs or the elimination of unnecessary programs;

(5) have their performance in achieving desired outputs and outcomes and in efficiently operating programs measured and evaluated in an effort to improve program coordination, eliminate duplicate programs or activities and provide better information to the governor, the legislature and the public; and

(6) strive to keep the citizens of this state informed of the public benefits derived from the delivery of agency services and products and of the progress agencies are making with regard to improving performance.

B. The purpose of the Accountability in Government Act is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

Chapter 5 Section 3

Section 3. DEFINITIONS.--As used in the Accountability in Government Act:

A. "agency" means a branch, department, institution, board, bureau, commission, district or committee of the state;

B. "approved program" means a program included in an approved list of programs issued by the division pursuant to Section 4 of the Accountability in Government Act;

C. "baseline data" means the current level of a program's performance measures established pursuant to guidelines established by the division in consultation with the committee;

D. "committee" means the legislative finance committee;

E. "division" means the state budget division of the department of finance and administration;

F. "outcome" means the measurement of the actual impact or public benefit of a program;

G. "performance-based program budget" means a budget that identifies a total allowed expenditure for a program and includes performance measures, performance standards and program evaluations;

H. "performance measure" means a quantitative or qualitative indicator used to assess the output or outcome of an approved program;

I. "performance standard" means a targeted level of an output or outcome as indicated by performance measures; and

J. "program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization.

Chapter 5 Section 4

Section 4. PROGRAM IDENTIFICATION.--

A. Prior to May 1 of each year, each agency that is required to submit a performance-based program budget request in the subsequent fiscal year shall identify and submit to the division and committee a list of agency programs. The division, in consultation with the committee and the agency, shall review the list, make any necessary changes and issue an approved list within thirty days of receipt. The division shall send a copy of the approved list to the committee.

B. The program list submitted by an agency shall be accompanied by:

(1) the constitutional or statutory direction and authority for each program;

(2) identification of the users of each program;

(3) the purpose of each program or the benefit derived by the users of the program; and

(4) other financial information as required by the division in consultation with the committee.

Chapter 5 Section 5

Section 5. PERFORMANCE MEASURES.--

A. Prior to June 1 of each year, the division, in consultation with the committee, shall develop instructions for the development of performance measures for evaluating approved programs.

B. Prior to July 1 of each year, each agency required to submit a performance-based budget request in the subsequent fiscal year shall submit to the division the proposed performance measures for each approved program. The agency shall identify the outputs produced by each program, the outcomes resulting from each program and baseline data associated with each performance measure. The division, in consultation with the committee and the agency, shall review the proposed performance measures, make necessary changes and issue approved performance measures within thirty days of receipt. The division shall send a copy of the approved performance measures to the committee.

Chapter 5 Section 6

Section 6. SCHEDULE FOR SUBMISSION OF PERFORMANCE-BASED PROGRAM BUDGET REQUESTS.--

A. State agencies shall submit performance-based program budget requests pursuant to a schedule to be developed by the division, in consultation with the committee. No later than September 1, 1999 and each September 1 thereafter, the agencies shall submit performance-based program budget requests for the subsequent fiscal year to the division and to the committee based on that schedule.

B. The division shall develop the state agency schedule so that all agencies, including the judicial branch of government and institutions of higher education, are implementing performance-based program budgeting by the end of fiscal year 2004.

Chapter 5 Section 7

Section 7. PERFORMANCE-BASED PROGRAM BUDGET REQUESTS.--

A. The division, in consultation with the committee, shall develop instructions for those agencies required to submit performance-based program budget requests. The instructions shall be sent to the agencies on or before July 1 of each year and shall be in addition to any other forms required by Section 6-3-18 NMSA 1978. The instructions shall require that performance-based program budget requests contain the following:

(1) a summary of each approved program, including a justification for the program;

(2) for each approved program, an evaluation of the agency's progress in meeting the performance standards. The evaluation shall be developed as prescribed in the budget instructions;

(3) for each approved program, the outputs, outcomes, baseline data, performance measures and historic and proposed performance standards;

(4) if a performance audit has been conducted on an approved program during either the present or any of the immediately preceding two fiscal years, any responses that the agency may have to the audit and any actions that the agency has taken as a result of the audit; and

(5) any other information that the division believes may be useful to the division or the legislature in developing a budget for the agency.

B. On or before September 1 of each year, each agency required to submit a performance-based program budget request shall submit the request to the division and the committee in the form and manner prescribed in the budget instructions. Budget requests submitted pursuant to this section shall be in lieu of those required by Section 6-3-19 NMSA 1978.

Chapter 5 Section 8

Section 8. PERFORMANCE-BASED PROGRAM BUDGETS.--

A. For each agency required to submit a performance-based program budget request, the governor's proposed budget submitted pursuant to Section 6-3-21 NMSA 1978 and the committee's budget recommendation pursuant to Section 2-5-4 NMSA 1978 shall contain:

(1) a budget recommendation for each approved program;

(2) a summary, including the outputs and outcomes, of each approved program;

(3) performance measures and performance standards for each approved program;

(4) an evaluation of the performance of each approved program; and

(5) any other criteria deemed relevant by the governor or the committee.

B. For each agency required to submit a performance-based program budget request, the governor's proposed budget submitted pursuant to Section 6-3-21 NMSA 1978 and the committee's budget recommendation pursuant to Section 2-5-4 NMSA 1978 may contain recommendations regarding incentives or disincentives for agency performance. Incentives or disincentives may apply to all or part of an agency and may apply to any or all of an agency's approved programs.

C Pursuant to Section 6-3-7 NMSA 1978, the division shall prescribe forms and approve operating budgets for agencies funded by performance-based program budgets; however, the division shall not take any action that hinders an agency from operating under a performance-based appropriation or that is otherwise inconsistent with the purposes of the Accountability in Government Act. Notwithstanding the provisions of Sections 6-3-23 through

6-3-25 NMSA 1978, and absent specific authorization in the general appropriation act or other act of the legislature, no funds may be transferred either into or out of a performance-based program budget.

D. No later than July 1 of the year in which a state agency begins operating under a performance-based program budget, the agency shall develop, in consultation with the division, a plan for monitoring and reviewing the agency's programs to ensure that performance data are maintained and supported by agency records.

Chapter 5 Section 9

Section 9. Section 6-3-15 NMSA 1978 (being Laws 1955, Chapter 114, Section 6, as amended) is amended to read:

"6-3-15. STATE BUDGET DIVISION DIRECTOR--POWERS AND DUTIES.--The director of the state budget division shall:

A. administer the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978 and make rules and regulations necessary in that administration;

B. prepare a tentative budget and submit it to the governor;

C. assist the governor in the preparation of the budget;

D. obtain from each state agency information on budgetary and financial problems, including costs of operation, past income and expenditures and present financial condition;

E. require periodic reports from all state agencies giving detailed information 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 requirements, 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;

F. review data submitted by any state agency for use in the budget;

G. supervise the printing of the budget;

H. cause the budget to be indexed;

I. examine for budgetary purposes, if he deems it necessary, all bids, contracts, plans, specifications, blueprints, records, invoices, documents and correspondence relating to the enlarging, maintenance and operation of state institutions; and

J. through his agents and employees, visit each state agency whenever it is necessary to determine the financial needs of the agency."

Chapter 5 Section 10

Section 10. Section 6-3-18 NMSA 1978 (being Laws 1955, Chapter 114, Section 9, as amended) is amended to read:

"6-3-18. BUDGET FORMS.--On or before June 15 of each year, the state budget division shall send to each state agency forms that provide for the following information:

A. revenue or anticipated revenue, from all sources for the fiscal year last completed, the current fiscal year and for the succeeding fiscal year, including among other things:

(1) grants from the federal government;

(2) gifts and grants from private sources;

(3) income from investments;

(4) proceeds from sale of bonds or other instruments of indebtedness;

(5) income from sale of land;

(6) income from sale of personal property;

(7) income from lease of land or lease of personal property;

(8) income from services;

(9) income from fees, licenses, fines, penalties, tuition, royalties and other charges;

(10) income from athletic activities and related enterprises; and

(11) income from each tax collected;

B. expenditures or anticipated expenditures for the current fiscal year and for the two succeeding fiscal years, including among other things:

(1) capital expenditures consisting of:

(a) additions to plant or office;

(b) repairs and replacements;

(c) permanent equipment; and

(d) other; and

(2) operational expenditures consisting of:

(a) operation and maintenance of institution, office or building;

(b) supplies and equipment;

(c) personal services;

(d) travel; and

(e) other;

C. appropriation requested for the succeeding fiscal year, with a statement as to the functions and activities of each agency, division and bureau;

D. if increased appropriations are requested, the reason therefor; and

E. citation of statutory authority for functions and activities of the agency, a summary statement as to the workload of the agency and such other information as is specified by the state budget division."

Chapter 5 Section 11

Section 11. Section 6-3-19 NMSA 1978 (being Laws 1955, Chapter 114, Section 10, as amended) is amended to read:

"6-3-19. AGENCIES TO COMPLETE BUDGET FORMS.--Each state agency shall fill out the budget forms provided for in Section 6-3-18 NMSA 1978 in the manner prescribed by the state budget division. Each state agency, in completing the budget forms, shall include information for all divisions, subdivisions and offices of the agency. Related agencies, upon approval of the state budget division, may join in submitting one set of budget forms. Completed budget forms shall be returned to the state budget division not later than September 1 in each year."

Chapter 5 Section 12

Section 12. Section 6-3-21 NMSA 1978 (being Laws 1955, Chapter 114, Section 12) is amended to read:

"6-3-21. PREPARATION OF THE BUDGET.--

A. The governor shall prepare the budget and submit it to the legislative finance committee and each member of the legislature not later than December 15 of each year. In the preparation of the budget the governor may:

(1) change the tentative budget by adding new items, increasing or decreasing or eliminating items;

(2) obtain advice and assistance from any state agency; and

(3) hold hearings on the budget.

B. Any budget hearings conducted by the governor shall be open to the public. The governor may require the attendance of any head of an agency, whether elective or appointive. At the hearings, any officer or agency may protest budget items.

HOUSE BILL 37, AS AMENDED

CHAPTER 6

MAKING AN APPROPRIATION TO THE LEGISLATIVE FINANCE COMMITTEE FOR STAFFING NEEDS FOR FISCAL YEAR 2000.

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

Chapter 6 Section 1

Section 1. APPROPRIATION.--There is appropriated from the general fund to the legislative finance committee for expenditure in fiscal year 2000, to be disbursed on vouchers signed by the chairman of the committee or his designated representative, one million five hundred sixty-four thousand three hundred dollars ($1,564,300) for personal services for the staff of the legislative finance committee and four hundred sixty-nine thousand four hundred dollars ($469,400) for employee benefits for the staff of the legislative finance committee. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

SENATE BILL 445, AS AMENDED

CHAPTER 7

RELATING TO TAXATION; CHANGING THE CONDITIONS FOR QUALIFICATION OF PRODUCTION RESTORATION PROJECTS PURSUANT TO THE OIL AND GAS SEVERANCE TAX ACT AND THE NATURAL GAS AND CRUDE OIL PRODUCTION INCENTIVE ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 7 Section 1

Section 1. Section 7-29-2 NMSA 1978 (being Laws 1959, Chapter 52, Section 2, as amended) is amended to read:

"7-29-2. DEFINITIONS.--As used in the Oil and Gas Severance Tax Act:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

I. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

J. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment that is determined by the value of such products;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act, for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil

conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act; and

P. "tax" means the oil and gas severance tax."

Chapter 7 Section 2

Section 2. Section 7-29B-2 NMSA 1978 (being Laws 1995, Chapter 15, Section 2) is amended to read:

"7-29B-2. DEFINITIONS.--As used in the Natural Gas and Crude Oil Production Incentive Act:

A. "department" means the taxation and revenue department;

B. "division" means the oil conservation division of the energy, minerals and natural resources department;

C. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;

D. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;

E. "person" means any individual or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;

F. "production projection" means the estimate of the productive capacity of a natural gas or oil well that is certified by the division pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act as the future rate of production from the well prior to the operator of the well performing a well workover project on the well;

G. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

H. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993 as approved and certified by the division;

I. "severance" means the taking from the soil of any product in any manner whatsoever;

J. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced in excess of the production projection from a well workover project; and

K. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division."

Chapter 7 Section 3

Section 3. Section 7-29B-3 NMSA 1978 (being Laws 1995, Chapter 15, Section 3) is amended to read:

"7-29B-3. APPROVAL OF PRODUCTION RESTORATION PROJECTS AND WELL WORKOVER PROJECTS.--

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules and regulations adopted pursuant to that act for approval of a production restoration project and the application is made within twelve months of the completion of the production restoration project; and

(2) the division records show that the well had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules and regulations adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure proposed to be undertaken by the operator of the well is a procedure intended to increase the production from the well, but is not routine maintenance that would be performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recomplete for production;

(b) recompletion by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment; or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division an estimate of the productive capacity of the well based on at least twelve months of established production, and the division, based on its verification of that estimate, determines the future rate of production from the well prior to the operator of the well performing the well workover project on the well and certifies that as the production projection for the project."

HOUSE BILL 11, AS AMENDED

CHAPTER 8

RELATING TO AGRICULTURE; AMENDING AND ENACTING SECTIONS OF THE COTTON BOLL WEEVIL CONTROL ACT; PROVIDING FOR TERMINATION OF COTTON BOLL WEEVIL CONTROL COMMITTEES; PROVIDING ADDITIONAL POWERS; EXEMPTING COMMITTEES FROM THE PROCUREMENT CODE AND THE PERSONNEL ACT.

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

Chapter 8 Section 1

Section 1. Section 76-6A-10 NMSA 1978 (being Laws 1996, Chapter 77, Section 10) is amended to read:

"76-6A-10. REFERENDUM--COTTON BOLL WEEVIL CONTROL DISTRICTS--COTTON BOLL WEEVIL CONTROL COMMITTEES.--After public hearing, if the director decides there is justification for creating a cotton boll weevil control district, the department shall hold a referendum. When cotton producers who represent sixty-six percent of the cotton acreage within the area threatened with or infested by the cotton boll weevil vote in favor of the establishment of a cotton boll weevil control district, a cotton boll weevil control district shall be created. The cotton producers within a cotton boll weevil control district shall promptly establish, and shall elect not less than three nor more than seven members to, a cotton boll weevil control committee. Cotton boll weevil control committee members shall not receive per diem or compensation for their services. Cotton boll weevil control districts and cotton boll weevil control committees shall cease to exist when the cotton boll weevil control committee and the director determine that all financial and legal obligations have been satisfied."

Chapter 8 Section 2

Section 2. Section 76-6A-11 NMSA 1978 (being Laws 1996, Chapter 77, Section 11, as amended) is amended to read:

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

A. Cotton boll weevil control committees may:

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

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

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

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

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

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

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

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

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

Chapter 8 Section 3

Section 3. A new section of the Cotton Boll Weevil Control Act is enacted to read:

"EXEMPTION FROM PROCUREMENT CODE AND PERSONNEL ACT.--Cotton boll weevil control committees are exempt from the provisions of the Procurement Code and the Personnel Act. The committee members and committee employees are public employees for the purposes of the Tort Claims Act and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department."

HOUSE BILL 103

CHAPTER 9

RELATING TO EDUCATIONAL RETIREMENT; MAKING AN AD HOC COST-OF-LIVING ADJUSTMENT.

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

Chapter 9 Section 1

Section 1. Section 22-11-31 NMSA 1978 (being Laws 1979, Chapter 333, Section 2, as amended) is amended to read:

"22-11-31. COST-OF-LIVING ADJUSTMENT--ADDITIONAL CONTRIBUTIONS.--

A. For the purposes of this section:

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

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

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

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

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

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

B. On or after July 1, 1984, each annuity shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five or on July 1 following the year a member retires, whichever is later. The annuity shall be adjusted by applying an adjustment factor that results in either an adjustment equal to one-half of the percentage increase or decrease of the consumer price index between the next preceding calendar year and the preceding calendar year, except that the adjustment shall not exceed four percent, in absolute value, nor be less than two percent, in absolute value. In the event that the percentage increase or decrease of the consumer price index is less than two percent, in absolute value, the adjustment factor shall be the same as the percentage increase or decrease of the consumer price index. No negative adjustment in the retirement benefit shall reduce the member's benefit below that which he received upon the date of his retirement.

C. A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act in effect prior to July 1, 1984 shall have his annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which he attains the age of sixty-five, when he shall have his annuity readjusted annually and cumulatively under the provisions of this section. A member who retires after attaining the age of sixty-five shall have his annuity adjusted annually and cumulatively commencing on July 1 of the year following his retirement.

D. A retired member who returns to work shall be subject to the provisions of this section as they exist at the time of his final retirement.

E. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member who the board certifies was disabled at regular retirement shall be adjusted in accordance with Subsections B and C of this section, except that the benefits shall be adjusted annually and cumulatively commencing on July 1 of the

third full year following the year in which the member was approved by the board for disability or retirement.

F. The board shall adjust the benefits of each person receiving an annuity as of June 30, 1999. The adjustment shall be made on July 1, 1999 on the basis of an increase of two dollars ($2.00) per month for each year since the member's last retirement plus an increase of one dollar ($1.00) per month for each year of credited service at the time of the last retirement."

HOUSE BILL 221

CHAPTER 10

DIRECTING THE TAXATION AND REVENUE DEPARTMENT TO CONDUCT A TEMPORARY TAX AMNESTY PROGRAM; EARMARKING CERTAIN TAX AMNESTY REVENUES FOR THE TAXATION AND REVENUE INFORMATION MANAGEMENT SYSTEMS PROJECT; MAKING APPROPRIATIONS.

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

Chapter 10 Section 1

Section 1. TEMPORARY TAX AMNESTY PROGRAM--DISTRIBUTION OF REVENUES--APPROPRIATIONS.--

A. Two hundred thousand dollars ($200,000) is appropriated from the general fund to the taxation and revenue department for expenditure in fiscal year 2000 for the purpose of conducting a tax amnesty program as provided in Subsection B of this section. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

B. For the taxes and tax acts administered under the Tax Administration Act, the secretary of taxation and revenue, with the concurrence of the governor, is authorized to declare an amnesty period of no more than ninety days, provided that any amnesty period occur within fiscal year 2000. All revenue collected as a result of the tax amnesty shall be identified specifically and reported to the first session of the forty-fifth legislature.

C. The secretary of taxation and revenue is authorized to waive, during the amnesty period only, the interest and penalty provisions under Sections 7-1-67 and 7-1-69 NMSA 1978 on taxes that are:

(1) due and not assessed prior to the day the amnesty period begins; and

(2) due, assessed and not paid on the day the amnesty period begins, but that are paid by the taxpayer or that the taxpayer agrees to pay pursuant to an installment payment

agreement entered into with the taxation and revenue department on or before the last day of the amnesty period.

D. Upon deposit into the tax administration suspense fund of tax revenue identified specifically as revenue from taxes paid during the amnesty period attributable to the provisions of this section, and after all necessary distributions and transfers as provided by law, except to the general fund, have been made pursuant to Section 7-1-6.1 NMSA 1978, the first two hundred thousand dollars ($200,000) of the remaining amount shall be distributed to the general fund and the remainder, notwithstanding the provisions of Section 7-1-6.1 NMSA 1978, shall be transferred to the taxation and revenue department and is appropriated for expenditure by the department for the taxation and revenue information management systems project; provided that when the total amount transferred pursuant to this subsection reaches fifteen million dollars ($15,000,000), the remaining revenue from taxes paid during the amnesty period attributable to the provisions of this section shall be distributed pursuant to the provisions of Section 7-1-6.1 NMSA 1978.

Chapter 10 Section 2

Section 2. DELAYED REPEAL.--The provisions of this act are repealed effective July 1, 2001.

HOUSE BILL 31, AS AMENDED

CHAPTER 11

RELATING TO MORTGAGE FINANCING; CHANGING THE DEFINITION OF "MORTGAGE LENDER" IN THE MORTGAGE FINANCE AUTHORITY ACT AND CLARIFYING OTHER DEFINITIONS.

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

Chapter 11 Section 1

Section 1. Section 58-18-3 NMSA 1978 (being Laws 1975, Chapter 303, Section 3, as amended) is amended to read:

"58-18-3. DEFINITIONS.--As used in the Mortgage Finance Authority Act:

A. "authority" means the New Mexico mortgage finance authority;

B. "bonds" or "notes" means the bonds or bond anticipation notes, respectively, issued by the authority pursuant to the Mortgage Finance Authority Act;

C. "federal government" means the United States of America and any agency or instrumentality of the United States of America;

D. "FHA" means the federal housing administration;

E. "FHLMC" means the federal home loan mortgage corporation;

F. "FNMA" means the federal national mortgage association;

G. "home improvement loan" means a mortgage loan to finance those alterations, repairs and improvements on or in connection with an existing residence that the authority determines will substantially protect or improve the basic livability or energy efficiency of the residence;

H. "mobile home" means a movable or portable housing structure, constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence; it may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or two or more units separately towable but designed to be joined into one integral unit, as well as a single unit, except that "mobile home" does not include recreational vehicles, or modular or premanufactured homes built to Uniform Building Code standards and designed to be permanently affixed to real property;

I. "mortgage" means a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the authority, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan or an instrument creating a lien on a mobile home;

J. "mortgage lender" means any bank, bank or trust company, trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union building and loan association and any other lending institution; provided that the mortgage lender maintains an office in New Mexico, is authorized to make mortgage loans in the state and is approved by the authority and either the FHA, VA, FNMA or FHLMC;

K. "mortgage loan" means a financial obligation secured by a mortgage;

L. "municipality" means a county, city, town or village of the state;

M. "new mortgage loan" means a mortgage loan made by a mortgage lender to a person of low or moderate income to finance project costs and containing terms and conditions required by rule of the authority;

N. "persons of low or moderate income" means persons and families within the state who are determined by the authority to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the authority to be in need of the assistance made available by the Mortgage Finance Authority Act, taking into consideration the following factors:

(1) the total income of those persons and families available for housing needs;

(2) the size of the family units;

(3) the cost and condition of housing facilities available;

(4) the ability of those persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing; and

(5) standards established by various programs of the federal government for determining eligibility based on income of those persons and families;

O. "project" means a work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement or rehabilitation approved by the authority for the primary purpose of providing sanitary, decent, safe and affordable residential housing within the state for one or more persons of low or moderate income;

P. "project costs" means the total of all costs incurred in the development of a project that is approved by the authority as reasonable and necessary; "project costs" may include:

(1) the cost of acquiring real property and improvements located on the property, including payments for options, deposits or contracts to purchase real property;

(2) cost of site preparation, demolition and development;

(3) fees in connection with the planning, execution and financing of a project;

(4) operating and carrying costs during construction;

(5) cost of construction, remodeling, rehabilitation, reconstruction, home improvements, fixtures, furnishings and equipment for the project;

(6) cost of land improvements both on and off site;

(7) expenses in connection with initial occupancy of a project;

(8) reasonable profit and risk fees to the general contractor in addition to the job overhead and, if applicable, to the developer;

(9) allowances established by the authority for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(10) the cost of other items, including tenant relocation if tenant relocation costs are not otherwise being provided for, indemnity and surety bonds, premiums on insurance and fees and expenses of trustees, depositaries and paying agents of the bonds and notes that the authority determines to be reasonable and necessary for the development of a project;

Q. "real property" means land, space rights, air rights and tangible, intangible, legal and equitable interests in land;

R. "rehabilitation loan" means a qualified rehabilitation loan within the meaning of Section 143(k)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

S. "residential housing" means the acquisition, construction or rehabilitation of real property, buildings and improvements undertaken primarily to provide one or more dwelling accommodations for persons of low or moderate income;

T. "state" means New Mexico;

U. "state, local, federal or tribal agency" means any board, authority, agency, department, commission, public corporation, body politic or instrumentality of the state or of a local, federal or tribal government; and

V. "VA" means the veterans affairs department."

SENATE BILL 142, AS AMENDED

CHAPTER 12

MAKING AN APPROPRIATION TO THE DRINKING WATER STATE REVOLVING LOAN FUND FOR DRINKING WATER SYSTEM FINANCING; DECLARING AN EMERGENCY.

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

Chapter 12 Section 1

Section 1. APPROPRIATION.--Pursuant to Section 6-21-6.1 NMSA 1978, one million six hundred eighty-six thousand two hundred seventy-nine dollars ($1,686,279) is

appropriated from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 1999 and subsequent fiscal years to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the public project revolving fund.

Chapter 12 Section 2

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

HOUSE BILL 84

SIGNED MARCH 8, 1999

CHAPTER 13

MAKING AN APPROPRIATION TO THE SUPREME COURT BUILDING COMMISSION CONSTRUCTION FUND FOR EXPENSES RELATED TO CAPITAL IMPROVEMENTS OF SUPREME COURT FACILITIES; DECLARING AN EMERGENCY.

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

Chapter 13 Section 1

Section 1. APPROPRIATION.--Fourteen thousand dollars ($14,000) is appropriated from the supreme court building addition reserve fund, account number 3-220.0, fund 402, and the supreme court building addition interest and retirement fund, account number 1-220.0, fund 860, to the supreme court building commission construction fund for expenditure in fiscal year 1999 and subsequent fiscal years for the purpose of defraying expenses related to capital improvements of supreme court facilities. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the supreme court building addition reserve fund or the supreme court building addition interest and retirement fund.

Chapter 13 Section 2

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

HOUSE BILL 408

SIGNED MARCH 8, 1999

CHAPTER 14

RELATING TO TAXATION; AMENDING THE WITHHOLDING TAX ACT TO REQUIRE PASS-THROUGH ENTITIES TO FILE INFORMATION RETURNS AND TO WITHHOLD TAX FROM CERTAIN OWNERS.

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

Chapter 14 Section 1

Section 1. Section 7-3-2 NMSA 1978 (being Laws 1990, Chapter 64, Section 1, as amended) is amended to read:

"7-3-2. DEFINITIONS.--As used in the 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. "employee" means either an individual domiciled within the state who performs services either within or without the state for an employer or, to the extent permitted by law, an individual domiciled outside of the state who performs services within the state for an employer;

C. "employer" means a person, or an officer, agent or employee of that person, having control of the payment of wages, doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person, except that if the person for whom the individual performs or performed the services does not have control over the payment of the wages for such services, "employer" means the person having control of the payment of wages;

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

E. "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 business association, other than a sole proprietorship, not taxed as a corporation for federal income tax purposes for the taxable year;

F. "pass-through entity" means any business association other than:

(1) a sole proprietorship;

(2) an estate or trust; or

(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;

G. "payor" means any person making payment of a pension or annuity to an individual domiciled in New Mexico;

H. "payroll period" means a period for which a payment of wages is made to the employee by his employer;

I. "person" means any individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association and, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

J. "wagerer" means any person who receives winnings that are subject to withholding;

K. "wages" means remuneration in cash or other form for services performed by an employee for an employer;

L. "winnings that are subject to withholding" means "winnings which are subject to withholding" as that term is defined in Section 3402 of the Internal Revenue Code;

M. "withholdee" means:

(1) an individual domiciled in New Mexico receiving a pension or annuity from which an amount of tax is deducted and withheld pursuant to the Withholding Tax Act;

(2) an employee; and

(3) a wagerer; and

N. "withholder" means a payor, an employer or any person required to deduct and withhold from winnings that are subject to withholding."

Chapter 14 Section 2

Section 2. Section 7-3-5 NMSA 1978 (being Laws 1961, Chapter 243, Section 5, as amended) is amended to read:

"7-3-5. WITHHOLDER LIABLE FOR AMOUNTS DEDUCTED AND WITHHELD--EXCEPTIONS.--Every withholder or pass-through entity shall be liable for amounts required to be deducted and withheld by the Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld, except that:

A. if the withholder or pass-through entity fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the withholder shall not be liable for those amounts not deducted and withheld; or

B. if the withholder's or pass-through entity's failure to deduct and withhold the required amounts was due to reasonable cause, the withholder or pass-through entity shall not be liable for amounts not deducted and withheld."

Chapter 14 Section 3

Section 3. A new section of the Withholding Tax Act is enacted to read:

"INFORMATION RETURN REQUIRED FROM PASS-THROUGH ENTITY--WITHHOLDING.--

A. A pass-through entity doing business in this state shall file an annual information return with the department on or before the due date of the entity's federal return for the taxable year. The information return shall be signed by the business manager or one of the owners of the pass-through entity.

B. The information return required by this section shall contain all information required by the department, including:

(1) the pass-through entity's gross income;

(2) the pass-through entity's net income;

(3) the amount of each owner's share of the pass-through entity's net income; and

(4) the name, address and tax identification number of each owner entitled to a share of net income.

C. A pass-through entity shall provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act with respect to the owner's share of net income.

D. At the time of filing the information return required by this section, the pass-through entity shall deduct and withhold from each nonresident owner's share of net income an amount equal to the owner's share of net income multiplied by a rate set by department regulation. In the case of an owner who is an individual or entity not taxed as a corporation for federal income tax purposes for the taxable year, the rate shall not exceed the rate for composite returns. In the case of an owner that is a corporation or other entity taxed as a corporation for the taxable year, the rate shall not exceed the maximum rate for corporate income tax.

E. The provisions of Subsection D of this section shall not apply with regard to the share of net income of a nonresident owner who has executed an agreement with the department that the owner will report and pay tax, if required, on its own return pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act.

F. Amounts deducted from the owner's share of net income under the provisions of this section shall be a collected tax. No owner shall have a right of action against the pass-through entity for any amount deducted and withheld from the owner's share of net income."

Chapter 14 Section 4

Section 4. APPLICABILITY.--The provisions of this act are applicable to taxable years beginning on or after January 1, 1999.

HOUSE BILL 487, AS AMENDED

CHAPTER 15

RELATING TO STATE BUDGETS; ENACTING THE ACCOUNTABILITY IN GOVERNMENT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 15 Section 1

Section 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Accountability in Government Act".

Chapter 15 Section 2

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that agencies should:

(1) be granted sufficient statutory authority and flexibility to use their resources in the best possible way in order to better serve the citizens of New Mexico through the efficient delivery of services and products and the effective administration of governmental programs;

(2) be held accountable for the services and products they deliver in accordance with clearly defined missions, goals and objectives;

(3) develop performance measures for evaluating performance and assessing progress in achieving goals and objectives, and those measures should be integrated into the planning and budgeting process and maintained on an ongoing basis;

(4) have incentives to deliver services and products in the most efficient and effective manner and, if appropriate, recommend the restructuring of ineffective programs or the elimination of unnecessary programs;

(5) have their performance in achieving desired outputs and outcomes and in efficiently operating programs measured and evaluated in an effort to improve program coordination, eliminate duplicate programs or activities and provide better information to the governor, the legislature and the public; and

(6) strive to keep the citizens of this state informed of the public benefits derived from the delivery of agency services and products and of the progress agencies are making with regard to improving performance.

B. The purpose of the Accountability in Government Act is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

Chapter 15 Section 3

Section 3. DEFINITIONS.--As used in the Accountability in Government Act:

A. "agency" means a branch, department, institution, board, bureau, commission, district or committee of the state;

B. "approved program" means a program included in an approved list of programs issued by the division pursuant to Section 4 of the Accountability in Government Act;

C. "baseline data" means the current level of a program's performance measures established pursuant to guidelines established by the division in consultation with the committee;

D. "committee" means the legislative finance committee;

E. "division" means the state budget division of the department of finance and administration;

F. "outcome" means the measurement of the actual impact or public benefit of a program;

G. "performance-based program budget" means a budget that identifies a total allowed expenditure for a program and includes performance measures, performance standards and program evaluations;

H. "performance measure" means a quantitative or qualitative indicator used to assess the output or outcome of an approved program;

I. "performance standard" means a targeted level of an output or outcome as indicated by performance measures; and

J. "program" means a set of activities undertaken in accordance with a plan of action organized to realize identifiable goals and objectives based on legislative authorization.

Chapter 15 Section 4

Section 4. PROGRAM IDENTIFICATION.--

A. Prior to May 1 of each year, each agency that is required to submit a performance-based program budget request in the subsequent fiscal year shall identify and submit to the division and committee a list of agency programs. The division, in consultation with the committee and the agency, shall review the list, make any necessary changes and issue an approved list within thirty days of receipt. The division shall send a copy of the approved list to the committee.

B. The program list submitted by an agency shall be accompanied by:

(1) the constitutional or statutory direction and authority for each program;

(2) identification of the users of each program;

(3) the purpose of each program or the benefit derived by the users of the program; and

(4) other financial information as required by the division in consultation with the committee.

Chapter 15 Section 5

Section 5. PERFORMANCE MEASURES.--

A. Prior to June 1 of each year, the division, in consultation with the committee, shall develop instructions for the development of performance measures for evaluating approved programs.

B. Prior to July 1 of each year, each agency required to submit a performance-based budget request in the subsequent fiscal year shall submit to the division the proposed performance measures for each approved program. The agency shall identify the

outputs produced by each program, the outcomes resulting from each program and baseline data associated with each performance measure. The division, in consultation with the committee and the agency, shall review the proposed performance measures, make necessary changes and issue approved performance measures within thirty days of receipt. The division shall send a copy of the approved performance measures to the committee.

Chapter 15 Section 6

Section 6. SCHEDULE FOR SUBMISSION OF PERFORMANCE-BASED PROGRAM BUDGET REQUESTS.--

A. State agencies shall submit performance-based program budget requests pursuant to a schedule to be developed by the division, in consultation with the committee. No later than September 1, 1999 and each September 1 thereafter, the agencies shall submit performance-based program budget requests for the subsequent fiscal year to the division and to the committee based on that schedule.

B. The division shall develop the state agency schedule so that all agencies, including the judicial branch of government and institutions of higher education, are implementing performance-based program budgeting by the end of fiscal year 2004.

Chapter 15 Section 7

Section 7. PERFORMANCE-BASED PROGRAM BUDGET REQUESTS.--

A. The division, in consultation with the committee, shall develop instructions for those agencies required to submit performance-based program budget requests. The instructions shall be sent to the agencies on or before July 1 of each year and shall be in addition to any other forms required by Section 6-3-18 NMSA 1978. The instructions shall require that performance-based program budget requests contain the following:

(1) a summary of each approved program, including a justification for the program;

(2) for each approved program, an evaluation of the agency's progress in meeting the performance standards. The evaluation shall be developed as prescribed in the budget instructions;

(3) for each approved program, the outputs, outcomes, baseline data, performance measures and historic and proposed performance standards;

(4) if a performance audit has been conducted on an approved program during either the present or any of the immediately preceding two fiscal years, any responses that the agency may have to the audit and any actions that the agency has taken as a result of the audit; and

(5) any other information that the division believes may be useful to the division or the legislature in developing a budget for the agency.

B. On or before September 1 of each year, each agency required to submit a performance-based program budget request shall submit the request to the division and the committee in the form and manner prescribed in the budget instructions. Budget requests submitted pursuant to this section shall be in lieu of those required by Section 6-3-19 NMSA 1978.

Chapter 15 Section 8

Section 8. PERFORMANCE-BASED PROGRAM BUDGETS.--

A. For each agency required to submit a performance-based program budget request, the governor's proposed budget submitted pursuant to Section 6-3-21 NMSA 1978 and the committee's budget recommendation pursuant to Section 2-5-4 NMSA 1978 shall contain:

(1) a budget recommendation for each approved program;

(2) a summary, including the outputs and outcomes, of each approved program;

(3) performance measures and performance standards for each approved program;

(4) an evaluation of the performance of each approved program; and

(5) any other criteria deemed relevant by the governor or the committee.

B. For each agency required to submit a performance-based program budget request, the governor's proposed budget submitted pursuant to Section 6-3-21 NMSA 1978 and the committee's budget recommendation pursuant to Section 2-5-4 NMSA 1978 may contain recommendations regarding incentives or disincentives for agency performance. Incentives or disincentives may apply to all or part of an agency and may apply to any or all of an agency's approved programs.

C Pursuant to Section 6-3-7 NMSA 1978, the division shall prescribe forms and approve operating budgets for agencies funded by performance-based program budgets; however, the division shall not take any action that hinders an agency from operating under a performance-based appropriation or that is otherwise inconsistent with the purposes of the Accountability in Government Act. Notwithstanding the provisions of Sections 6-3-23 through 6-3-25 NMSA 1978, and absent specific authorization in the general appropriation act or other act of the legislature, no funds may be transferred either into or out of a performance-based program budget.

D. No later than July 1 of the year in which a state agency begins operating under a performance-based program budget, the agency shall develop, in consultation with the

division, a plan for monitoring and reviewing the agency's programs to ensure that performance data are maintained and supported by agency records.

Chapter 15 Section 9

Section 9. Section 6-3-15 NMSA 1978 (being Laws 1955, Chapter 114, Section 6, as amended) is amended to read:

"6-3-15. STATE BUDGET DIVISION DIRECTOR--POWERS AND DUTIES.--The director of the state budget division shall:

A. administer the provisions of Sections 6-3-1 through 6-3-22 NMSA 1978 and make rules and regulations necessary in that administration;

B. prepare a tentative budget and submit it to the governor;

C. assist the governor in the preparation of the budget;

D. obtain from each state agency information on budgetary and financial problems, including costs of operation, past income and expenditures and present financial condition;

E. require periodic reports from all state agencies giving detailed information 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 requirements, 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;

F. review data submitted by any state agency for use in the budget;

G. supervise the printing of the budget;

H. cause the budget to be indexed;

I. examine for budgetary purposes, if he deems it necessary, all bids, contracts, plans, specifications, blueprints, records, invoices, documents and correspondence relating to the enlarging, maintenance and operation of state institutions; and

J. through his agents and employees, visit each state agency whenever it is necessary to determine the financial needs of the agency."

Chapter 15 Section 10

Section 10. Section 6-3-18 NMSA 1978 (being Laws 1955, Chapter 114, Section 9, as amended) is amended to read:

"6-3-18. BUDGET FORMS.--On or before June 15 of each year, the state budget division shall send to each state agency forms that provide for the following information:

A. revenue or anticipated revenue, from all sources for the fiscal year last completed, the current fiscal year and for the succeeding fiscal year, including among other things:

(1) grants from the federal government;

(2) gifts and grants from private source;

(3) income from investments;

(4) proceeds from sale of bonds or other instruments of indebtedness;

(5) income from sale of land;

(6) income from sale of personal property;

(7) income from lease of land or lease of personal property;

(8) income from services;

(9) income from fees, licenses, fines, penalties, tuition, royalties and other charges;

(10) income from athletic activities and related enterprises; and

(11) income from each tax collected;

B. expenditures or anticipated expenditures for the current fiscal year and for the two succeeding fiscal years, including among other things:

(1) capital expenditures consisting of:

(a) additions to plant or office;

(b) repairs and replacements;

(c) permanent equipment; and

(d) other; and

(2) operational expenditures consisting of:

(a) operation and maintenance of institution, office or building;

(b) supplies and equipment;

(c) personal services;

(d) travel; and

(e) other;

C. appropriation requested for the succeeding fiscal year, with a statement as to the functions and activities of each agency, division and bureau;

D. if increased appropriations are requested, the reason therefor; and

E. citation of statutory authority for functions and activities of the agency, a summary statement as to the workload of the agency and such other information as is specified by the state budget division."

Chapter 15 Section 11

Section 11. Section 6-3-19 NMSA 1978 (being Laws 1955, Chapter 114, Section 10, as amended) is amended to read:

"6-3-19. AGENCIES TO COMPLETE BUDGET FORMS.--Each state agency shall fill out the budget forms provided for in Section 6-3-18 NMSA 1978 in the manner prescribed by the state budget division. Each state agency, in completing the budget forms, shall include information for all divisions, subdivisions and offices of the agency. Related agencies, upon approval of the state budget division, may join in submitting one set of budget forms. Completed budget forms shall be returned to the state budget division not later than September 1 in each year."

Chapter 15 Section 12

Section 12. Section 6-3-21 NMSA 1978 (being Laws 1955, Chapter 114, Section 12) is amended to read:

"6-3-21. PREPARATION OF THE BUDGET.--

A. The governor shall prepare the budget and submit it to the legislative finance committee and each member of the legislature not later than January 1 of each year. In the preparation of the budget the governor may:

(1) change the tentative budget by adding new items, increasing or decreasing or eliminating items;

(2) obtain advice and assistance from any state agency; and

(3) hold hearings on the budget.

B. Any budget hearings conducted by the governor shall be open to the public. The governor may require the attendance of any head of an agency, whether elective or appointive. At the hearings, any officer or agency may protest budget items."

Chapter 15 Section 13

Section 13. REPEAL.--Section 6-3-14 NMSA 1978 (being Laws 1921, Chapter 133, Section 314) is repealed.

SENATE BILL 111, AS AMENDED

CHAPTER 16

RELATING TO INFORMATION TECHNOLOGY; CREATING A MANAGEMENT COMMISSION; CREATING AN OFFICE; CREATING A LEGISLATIVE OVERSIGHT COMMITTEE; PROVIDING POWERS AND DUTIES; REQUIRING ANNUAL PLANNING; DECLARING AN EMERGENCY.

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

Chapter 16 Section 1

Section 1. SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Information Technology Management Act".

Chapter 16 Section 2

Section 2. PURPOSE.--The purpose of the Information Technology Management Act is to:

A. assess and inventory current information systems' services and resources;

B. coordinate the central and individual executive agency information systems in a manner that ensures that the most cost-effective and efficient information and communication systems and resources are being used by executive agencies;

C. develop a five-year state strategic plan for information and communication management that is updated annually by the information technology commission; and

D. promote data sharing between governmental entities and provide a mechanism for information technology expertise to be shared between the branches of state government and local governments.

Chapter 16 Section 3

Section 3. DEFINITIONS.--As used in the Information Technology Management Act:

A. "agency plan" means an executive agency's annual information technology plan;

B. "commission" means the information technology commission;

C. "development project" means the period from when funding is made available for information technology development until after system implementation;

D. "executive agency" means a state agency of the executive branch of government;

E. "information technology" means computer and voice and data communication software and hardware, including imaging systems, terminals and communications networks and facilities, staff information systems services and professional services contracts for information systems services;

F. "office" means the information technology management office;

G. "state information architecture" includes the standards, guidelines, policies and protocols to implement information technology; and

H. "state strategic plan" means the executive information technology planning document that spans a three- to five-year period

Chapter 16 Section 4

Section 4. COMMISSION CREATED--MEMBERSHIP.--

A. The "information technology commission" is created. The commission consists of thirteen members as follows:

(1) five members appointed by the governor, three of whom are from agencies whose primary funding is not from internal service funds;

(2) one staff member with telecommunications regulatory experience appointed by the chairman of the public regulation commission;

(3) two members representing education, one appointed by the commission on higher education and one appointed by the president of the state board of education;

(4) two members from the national laboratories; and

(5) three members appointed by the governor to represent the public with information technology and management experience, but who are not employees of the state or a political subdivision of the state and who do not have any financial interest in the state

information systems or state contracts. The public members shall serve for staggered three-year terms.

B. Additionally, the following advisory members may be appointed at the request of the commission:

(1) two members from the judicial information systems council appointed by the chairman of the council;

(2) two members from the house of representatives and two members from the senate appointed by the New Mexico legislative council; and

(3) two members representing local governments, one appointed by the New Mexico association of counties and one appointed by the New Mexico municipal league.

C. The members of the commission who are not supported by public money may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

D. For the initial year of operation, the chief information officer shall act as chairman. Thereafter, the commission shall elect a chairman and vice chairman for a two-year term.

E. The commission shall meet at least semiannually and may meet at the call of the chairman or a majority of the members.

Chapter 16 Section 5

Section 5. COMMISSION--POWERS AND DUTIES.--The commission shall:

A. adopt and promulgate rules that specify the state information architecture to implement the state strategic plan;

B. adopt and promulgate other rules necessary for the administration of the Information Technology Management Act and the conduct of the affairs of the office;

C. develop strategies for identifying and managing development projects that involve multiple agencies to ensure appropriate and timely resolution of system development problems;

D. provide information technology planning guidelines for agency annual plans;

E. update the state strategic plan annually, including identifying areas of noncompliance with the state strategic plan; and

F. submit proposed rules to the information technology oversight committee for its review prior to adoption.

Chapter 16 Section 6

Section 6. INFORMATION TECHNOLOGY MANAGEMENT OFFICE CREATED--ADMINISTRATIVE ATTACHMENT--CHIEF INFORMATION OFFICER--QUALIFICATIONS--STAFF.--

A. The "information technology management office" is created. The office is administratively attached to the office of the governor.

B. The head of the office is the "chief information officer", who is appointed by the governor with the advice and consent of the senate. The chief information officer shall have a minimum of seven years' experience in the management of a large information technology enterprise. The chief information officer serves at the pleasure of the governor.

C. The chief information officer may hire staff as necessary to carry out the provisions of the Information Technology Management Act. Staff of the office are subject to the provisions of the Personnel Act.

Chapter 16 Section 7

Section 7. OFFICE--POWERS AND DUTIES.--

A. The office may:

(1) obtain information, documents and records that are not confidential by law from an executive agency as needed to carry out the provisions of the Information Technology Management Act;

(2) enter into contracts;

(3) perform performance or other audits or reviews of executive agency development projects or management processes; and

(4) when requested, offer assistance or expertise to the judiciary, legislature, institutions of higher education, counties, municipalities, public school districts and other political subdivisions of the state.

B. The office shall:

(1) review agency plans and make recommendations to the commission regarding prudent allocation of information technology resources; reduction of data, hardware and

software redundancy; improving system interoperability and data accessibility among agencies;

(2) approve executive agency requests for proposals and information technology professional service contracts for technical sufficiency as they pertain to information technology;

(3) monitor executive agency compliance with its agency plan, the state strategic plan and state information architecture and report to the commission and executive agency management on noncompliance;

(4) review information technology cost recovery mechanisms and information systems rate structures of executive agencies and make recommendations to the commission;

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

(6) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state strategic plan and make written recommendations to the department of finance and administration, the legislative finance committee and the information technology oversight committee by November 30 of each year;

(7) provide oversight of development projects, including ensuring adequate risk management and disaster recovery practices and monitor compliance with strategies developed by the commission for timely resolution of development project problems; and

(8) perform any other function assigned by the commission.

Chapter 16 Section 8

Section 8. AGENCY PLANS--CERTIFICATION.--

A. Agency plans shall:

(1) be consistent with the state strategic plan;

(2) demonstrate the executive agency has developed information technology objectives consistent with the agency plan, the state strategic plan and the state information technology architecture;

(3) show appropriate coordination with other executive agencies to improve customer service and reduce redundant data, hardware and software;

(4) include information about information technology objectives, inventories, data and expenditures for each fiscal year;

(5) demonstrate consistency with appropriations and budgets approved by the department of finance and administration; and

(6) include any other components required by the office or the commission.

B. Prior to making information technology purchases, an executive agency shall certify to the office that its proposed information technology purchases are consistent with its agency plan, the information architecture adopted by the commission and the state strategic plan. The office may delay or stop a purchase if it believes that the proposed purchase may not meet the requirements of the agency plan, state information architecture or state strategic plan.

Chapter 16 Section 9

Section 9. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The information technology commission and information technology management office are terminated July 1, 2005 pursuant to the Sunset Act. The commission and office shall continue to operate according to the provisions of the Information Technology Management Act until July 1, 2006. Effective July 1, 2006, that act is repealed.

Chapter 16 Section 10

Section 10. INFORMATION TECHNOLOGY OVERSIGHT COMMITTEE CREATED--APPOINTMENT.--

A. The "information technology oversight committee" is created as a joint interim legislative committee. The committee shall function from the date of its appointment until December 1 prior to the first session of the forty-seventh legislature unless terminated earlier by the New Mexico legislative council.

B. The committee shall be composed of eight members. The New Mexico legislative council shall appoint four members from the house of representatives and four members from the senate. At the time of making the appointments, the legislative council shall designate the chairman and the vice chairman.

C. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house; however, in no event shall either party have less than one member from each house on the committee. At the request of the committee chairman, members may be removed from the committee by the legislative council for nonattendance according to council policy. Vacancies on the committee, however

caused, may be filled by the legislative council or the council may reduce the size of the committee by not making replacement appointments and, in such case, need not readjust party representation.

D. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

E. Staff for the committee shall be furnished by the legislative council service. The legislative council service may request the assistance of the legislative finance committee in staffing the committee.

Chapter 16 Section 11

Section 11. OVERSIGHT COMMITTEE DUTIES.--

A. The information technology oversight committee shall hold one organizational meeting each year to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval.

B. The committee shall:

(1) monitor the work of the information technology commission and the information technology management office, including reviewing the commission's rules setting out the policies, standards, procedures and guidelines for information architecture and development projects and the annual update of the state strategic plan;

(2) oversee the implementation of the Information Technology Management Act, review the work of the judicial information systems council and division and oversee any other state-funded systems;

(3) meet on a regular basis to receive and evaluate periodic reports from the information technology commission and information technology management office; and

(4) perform such other related duties as assigned by the legislative council.

C. The committee shall make a report of its findings and recommendations for the consideration of each session of the legislature. The report and any suggested legislation shall be made available to the legislative council by December 31 preceding that session.

Chapter 16 Section 12

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

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE

SUBSTITUTE FOR HOUSE BILL 33, AS AMENDED

SIGNED MARCH 10, 1999

CHAPTER 17

RELATING TO CRIMINAL LAW; EXPANDING THE DEFINITION OF CREDIT CARD FOR CRIMINAL OFFENSES INVOLVING CREDIT CARDS; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 17 Section 1

Section 1. Section 30-16-25 NMSA 1978 (being Laws 1971, Chapter 239, Section 1) is amended to read:

"30-16-25. CREDIT CARDS--DEFINITIONS.--As used in Sections 30-16-25 through 30-16-38 NMSA 1978:

A. "cardholder" means the person or organization identified on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer;

B. "credit card" means:

(1) any instrument or device, whether known as a credit card, credit plate, charge card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in consideration of an undertaking or guarantee by the issuer of the payment of a check drawn by the cardholder; or

(2) a credit card account number;

C. "expired credit card" means a credit card which shows on its face that it is outdated;

D. "issuer" means the business organization or financial institution, or its duly authorized agent, which issues a credit card;

E. "participating party" means a business organization, or financial institution, other than the issuer, which acquires for value a sales slip or agreement;

F. "sales slip or agreement" means any writing evidencing a credit card transaction;

G. "merchant" means every person who is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by a cardholder;

H. "incomplete credit card" means a credit card upon which a part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not been stamped, embossed, imprinted or written on it;

I. "revoked credit card" means a credit card for which the permission to use has been suspended or terminated by the issuer, and notice thereof has been given to the cardholder; and

J. "anything of value" includes money, goods and services."

Chapter 17 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 73, AS AMENDED

CHAPTER 18

RELATING TO THE LOCAL DWI GRANT PROGRAM; AMENDING A SECTION OF THE LOCAL DWI GRANT PROGRAM ACT RELATING TO CRITERIA FOR AWARD OF DWI GRANTS TO LOCAL COMMUNITIES.

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

Chapter 18 Section 1

Section 1. Section 11-6A-3 NMSA 1978 (being Laws 1993, Chapter 65, Section 3, as amended) is amended to read:

"11-6A-3. LOCAL DWI GRANT PROGRAM--FUND.--

A. The division shall establish a local DWI grant program to make grants to municipalities or counties for new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

B. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for DWI program distributions, are appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act. An amount equal to the liquor excise tax revenues distributed annually to the fund less two million dollars ($2,000,000) is appropriated to

the division to make DWI program distributions to counties upon council approval of programs in accordance with the provisions of the Local DWI Grant Program Act. No more than five percent of the two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

C. In awarding DWI grants to local communities, the council:

(1) may fund new or existing innovative or model programs, services or activities of any kind designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse;

(2) may fund existing community-based programs, services or facilities for prevention, screening and treatment of alcoholism and alcohol abuse;

(3) shall give consideration to a broad range of approaches to prevention, education, screening, treatment or alternative sentencing, including programs that combine incarceration, treatment and aftercare, to address the problem of DWI, alcoholism or alcohol abuse; and

(4) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act and only for programs, services or activities consistent with that plan.

D. The council shall use the criteria in Subsection C of this section to approve DWI programs, services or activities for funding through the county DWI program distribution."

HOUSE BILL 424

CHAPTER 19

RELATING TO LAW ENFORCEMENT; EXPANDING THE LIST OF OFFENSES THAT ARE SEX OFFENSES; PROVIDING PUBLIC ACCESS TO INFORMATION REGARDING CERTAIN REGISTERED SEX OFFENDERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 19 Section 1

Section 1. Section 29-11A-1 NMSA 1978 (being Laws 1995, Chapter 106, Section 1) is amended to read:

"29-11A-1. SHORT TITLE.--Chapter 29, Article 11A NMSA 1978 may be cited as the "Sex Offender Registration and Notification Act"."

Chapter 19 Section 2

Section 2. Section 29-11A-2 NMSA 1978 (being Laws 1995, Chapter 106, Section 2) is amended to read:

"29-11A-2. FINDINGS--PURPOSE.--

A. The legislature finds that:

(1) sex offenders pose a significant risk of recidivism; and

(2) the efforts of law enforcement agencies to protect their communities from sex offenders are impaired by the lack of information available concerning convicted sex offenders who live within the agencies' jurisdictions.

B. The purpose of the Sex Offender Registration and Notification Act is to assist law enforcement agencies' efforts to protect their communities by:

(1) requiring sex offenders who are residents of New Mexico to register with the county sheriff of the county in which the sex offender resides;

(2) requiring sex offenders who are residents in other states, but who are employed in New Mexico or who attend school in New Mexico, to register with the county sheriff of the county in which the sex offender works or attends school;

(3) requiring the establishment of a central registry for sex offenders; and

(4) providing public access to information regarding certain registered sex offenders."

Chapter 19 Section 3

Section 3. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender Registration and Notification Act:

A. "sex offender" means a person eighteen years of age or older:

(1) who is a resident of New Mexico who is convicted of a sex offense in New Mexico;

(2) who changes his residence to New Mexico, when that person has been convicted of a sex offense in another state pursuant to state, federal or military law;

(3) who is a resident of New Mexico who is convicted of a sex offense pursuant to federal or military law; or

(4) who is a resident of another state and who has been convicted of a sex offense pursuant to state, federal or military law, but who is employed in New Mexico or attends school in New Mexico; and

B. "sex offense" means:

(1) criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children, as provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978;

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(6) solicitation to commit criminal sexual contact of a minor in the third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(7) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978."

Chapter 19 Section 4

Section 4. Section 29-11A-4 NMSA 1978 (being Laws 1995, Chapter 106, Section 4) is amended to read:

"29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

B. A sex offender who is a current resident of New Mexico shall register with the county sheriff no later than ten days after being released from the custody of the corrections department or being placed on probation or parole. A sex offender who changes his residence to New Mexico shall register with the county sheriff no later than ten days

after establishing residence in this state. When a sex offender registers with the county sheriff, he shall provide the following information:

(1) his legal name and any other names or aliases that he is using or has used;

(2) his date of birth;

(3) his social security number;

(4) his current address;

(5) his place of employment;

(6) the sex offense for which he was convicted; and

(7) the date and place of his sex offense conviction.

C. A sex offender who is a resident of another state but who is employed in New Mexico or attending school in New Mexico shall register with the county sheriff for the county in which the sex offender is working or attending school.

D. A sex offender who is a resident of another state but who is employed in New Mexico or attending school in New Mexico shall register with the county sheriff no later than ten days after beginning work or school. When the sex offender registers with the county sheriff, he shall provide the following information:

(1) his legal name and any other names or aliases that he is using or has used;

(2) his date of birth;

(3) his social security number;

(4) his current address in his state of residence and, if applicable, the address of his place of lodging in New Mexico while he is working or attending school;

(5) his place of employment or the name of the school he is attending;

(6) the sex offense for which he was convicted; and

(7) the date and place of his sex offense conviction.

E. When a sex offender registers with a county sheriff, the sheriff shall obtain:

(1) a photograph of the sex offender and a complete set of the sex offender's fingerprints; and

(2) a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender.

F. When a sex offender who is registered changes his residence within the same county, the sex offender shall send written notice of his change of address to the county sheriff no later than ten days after establishing his new residence.

G. When a sex offender who is registered changes his residence to a new county in New Mexico, the sex offender shall register with the county sheriff of the new county no later than ten days after establishing his new residence. The sex offender shall also send written notice of the change in residence to the county sheriff with whom he last registered no later than ten days after establishing his new residence.

H. Following his initial registration pursuant to the provisions of this section, a sex offender shall annually renew his registration with the county sheriff prior to December 31 of each subsequent calendar year.

I. A sex offender who willfully fails to comply with the registration requirements set forth in this section is guilty of a misdemeanor and shall be punished by imprisonment for a definite term less than one year or a fine of not more than one thousand dollars ($1,000) or both.

J. A sex offender who provides false information when complying with the registration requirements set forth in this section is guilty of a misdemeanor and shall be punished by imprisonment for a definite term less than one year or a fine of not more than one thousand dollars ($1,000) or both."

Chapter 19 Section 5

Section 5. Section 29-11A-5 NMSA 1978 (being Laws 1995, Chapter 106, Section 5) is amended to read:

"29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

A. A county sheriff shall maintain a local registry of sex offenders in his jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act.

B. The county sheriff shall forward registration information obtained from sex offenders to the department of public safety. The registration information shall be forwarded by the county sheriff no later than ten working days after the information is obtained from a sex offender.

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice.

D. The department of public safety shall retain registration information regarding sex offenders convicted for the following sex offenses for a period of twenty years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the first or second degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the third degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978; or

(4) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (3) of this subsection, as provided in Section 30-28-1 NMSA 1978.

E. The department of public safety shall retain registration information regarding sex offenders convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(5) solicitation to commit criminal sexual contact of a minor in the third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(6) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

F. The department of public safety shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act."

Chapter 19 Section 6

Section 6. Section 29-11A-7 NMSA 1978 (being Laws 1995, Chapter 106, Section 7) is amended to read:

"29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO REGISTER.--

A. A court shall provide a sex offender convicted in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall be included in judgment and sentence forms provided to the sex offender.

B. The corrections department, at the time of release of a sex offender in the department's custody, shall provide written notification to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The corrections department shall also provide written notification regarding a sex offender's release to the sheriff of the county in which the sex offender is released.

C. The department of public safety, at the time it is notified by officials from another state that a sex offender will be establishing residence in New Mexico, shall provide written notification to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act."

Chapter 19 Section 7

Section 7. Section 29-11A-8 NMSA 1978 (being Laws 1995, Chapter 106, Section 8) is amended to read:

"29-11A-8. IMMUNITY.--Nothing in the Sex Offender Registration and Notification Act creates a cause of action on behalf of a person against a public employer, public employee or public agency responsible for enforcement of the provisions of that act, so long as the public employer, public employee or public agency complies with the provisions of that act."

Chapter 19 Section 8

Section 8. A new section of the Sex Offender Registration and Notification Act is enacted to read:

"PUBLIC ACCESS TO INFORMATION REGARDING CERTAIN REGISTERED SEX OFFENDERS.--

A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

(1) criminal sexual penetration in the first or second degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Subsection A, B or C of Section 30-6A-3 NMSA 1978;

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or

(5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

B. A person who wants to obtain registration information regarding a sex offender described in Subsection A of this section may request that information from the:

(1) county sheriff for the county in which the sex offender resides;

(2) chief law enforcement officer for the municipality in which the sex offender resides;

(3) district attorney for the judicial district in which the sex offender resides; or

(4) secretary of public safety.

C. All requests for registration information regarding a sex offender described in Subsection A of this section are subject to the provisions of the Inspection of Public Records Act."

Chapter 19 Section 9

Section 9. REPEAL.--Section 29-11A-6 NMSA 1978 (being Laws 1995, Chapter 106, Section 6) is repealed.

Chapter 19 Section 10

Section 10. SEVERABILITY.--If any part or application of the Sex Offender Registration and Notification Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 19 Section 11

Section 11. APPLICABILITY.--The provisions of Sections 1 through 9 of this act apply to persons convicted of a sex offense committed on or after July 1, 1999. As to persons convicted of a sex offense committed prior to July 1, 1999, the laws with respect to registration requirements for sex offenders in effect at the time the sex offense was committed shall apply.

Chapter 19 Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 77

CHAPTER 20

RELATING TO PUBLIC LIBRARIES; ENABLING COUNTIES AND MUNICIPALITIES TO CONTRACT AND ENTER INTO JOINT POWERS AGREEMENTS WITH OTHER COUNTIES, MUNICIPALITIES, LOCAL SCHOOL BOARDS, POST-SECONDARY EDUCATIONAL INSTITUTIONS AND THE LIBRARY DIVISION OF THE OFFICE OF CULTURAL AFFAIRS FOR THE FURNISHING OF LIBRARY SERVICES; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 20 Section 1

Section 1. Section 3-18-14 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-17-12, as amended) is amended to read:

"3-18-14. MUNICIPAL LIBRARIES--ESTABLISHMENT--CONTRACT SERVICES--STATE PUBLICATIONS--GIFTS AND BEQUESTS.--

A. A municipality may establish and maintain a free public library under proper regulation and may receive, hold and dispose of a gift, donation, devise or bequest that is made to the municipality for the purpose of establishing, increasing or improving the library. The governing body may apply the use, profit, proceeds, interests and rents accruing from such property in any manner that will best improve the library and its use.

B. After a public library is established, the secretary of state shall furnish to the public library a copy of any work subsequently published under his authority.

C. A municipality establishing a public library may enter into contracts and joint powers agreements with other municipalities, counties, local school boards, post-secondary educational institutions and the library division of the office of cultural affairs for the furnishing of library services. In the interest of establishing a county or regional library, a municipality may convey its library facilities to the county as part of a contract for furnishing library services to the inhabitants of the municipality by the county or regional library."

Chapter 20 Section 2

Section 2. Section 4-36-2 NMSA 1978 (being Laws 1965, Chapter 87, Section 3, as amended) is amended to read:

"4-36-2. COUNTY LIBRARIES--ESTABLISHMENT--CONTRACT SERVICES--GIFTS AND BEQUESTS.--

A. A county may establish and maintain a free public library under proper regulation and may receive, hold and dispose of a gift, donation, devise or bequest that is made to the county for the purpose of establishing, increasing or improving the library. The governing body may apply the use, profit, proceeds, interest and rents accruing from such property in any manner that will best improve the library and its use.

B. A county establishing a public library may enter into contracts and joint powers agreements with other counties, municipalities, local school boards, post-secondary educational institutions and the library division of the office of cultural affairs for the furnishing of regional library services."

HOUSE BILL 15

CHAPTER 21

RELATING TO THE ENVIRONMENT; RE-AUTHORIZING THE WATER QUALITY CONTROL COMMISSION; AMENDING SECTIONS OF NMSA 1978.

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

Chapter 21 Section 1

Section 1. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended by Laws 1993, Chapter 100, Section 3 and also by Laws 1993, Chapter 291, Section 5) is amended to read:

"74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

A. By regulation the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant or for the disposal or re-use of septage or sludge.

B. The commission shall adopt regulations establishing procedures for certifying federal water quality permits.

C. Prior to the issuance of a permit, the constituent agency may require the submission of plans, specifications and other relevant information that it deems necessary.

D. The commission shall by regulation set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit.

E. The constituent agency shall deny any application for a permit or deny the certification of a federal water quality permit if:

(1) the effluent would not meet applicable state or federal effluent regulations, standards of performance or limitations;

(2) any provision of the Water Quality Act would be violated;

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharges' effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharges' effect on surface waters shall be measured at the point of discharge; or

(4) the applicant has, within the ten years immediately preceding the date of submission of the permit application:

(a) knowingly misrepresented a material fact in an application for a permit;

(b) refused or failed to disclose any information required under the Water Quality Act;

(c) been convicted of a felony or other crime involving moral turpitude;

(d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of any state or the United States; or

(f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state or the United States.

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance or modification of a permit. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

H. Permits shall be issued for fixed terms not to exceed five years, except that for new discharges, the term of the permit shall commence on the date the discharge begins, but in no event shall the term of the permit exceed seven years from the date the permit was issued.

I. By regulation, the commission may impose reasonable conditions upon permits requiring permittees to:

(1) install, use and maintain effluent monitoring devices;

(2) sample effluents and receiving waters for any known or suspected water contaminants in accordance with methods and at locations and intervals as may be prescribed by the commission;

(3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;

(4) provide any other information relating to the discharge or direct or indirect release of water contaminants; and

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

J. The commission shall provide by regulation a schedule of fees for permits, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. Fees collected pursuant to this section shall be deposited in the water quality management fund.

K. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

L. A permit may be terminated or modified by the constituent agency that issued the permit prior to its date of expiration for any of the following causes:

(1) violation of any condition of the permit;

(2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;

(3) violation of any provisions of the Water Quality Act or any applicable regulations, standard of performance or water quality standards;

(4) violation of any applicable state or federal effluent regulations or limitations; or

(5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

M. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons.

N. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for review before the commission. The petition shall be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action. Unless a timely petition for review is made, the decision of the constituent agency shall be final.

O. If a timely petition for review is made, the commission shall hold a hearing within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee if other than the petitioner by certified mail of the date, time and place of the hearing. If the commission deems the action that is the subject of the petition to be affected with substantial public interest, it shall ensure that the public receives notice of the date, time and place of the hearing and is given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. A person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

P. If the petitioner requests, the hearing shall be recorded at the cost of the petitioner. Unless the petitioner requests that the hearing be recorded, the decision of the commission shall be final."

Chapter 21 Section 2

Section 2. Section 74-6-17 NMSA 1978 (being Laws 1987, Chapter 333, Section 15, as amended) is amended to read:

"74-6-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The water quality control commission is terminated on July 1, 2005 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 74, Article 6 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Sections 74-6-3 and 74-6-4 NMSA 1978 are repealed."

HOUSE BILL 321, AS AMENDED

CHAPTER 22

RELATING TO CORRECTIONS; PROVIDING THAT THE CORRECTIONS INDUSTRIES DIVISION MAY SELL SERVICES AND PRODUCTS TO ENTITIES THAT PROVIDE CORRECTIONAL SERVICES TO THE CORRECTIONS DEPARTMENT.

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

Chapter 22 Section 1

Section 1. Section 33-8-12 NMSA 1978 (being Laws 1981, Chapter 127, Section 12, as amended) is amended to read:

"33-8-12. PRODUCTS--SALE--LABELING REQUIREMENT--PENALTY--EXCEPTIONS.--

A. No product or service manufactured or provided in whole or in part by inmate labor shall be sold or furnished except to a qualified purchaser; provided that such products may be resold by the user for purposes of salvage. As used in this subsection, "qualified purchaser" means:

(1) a state agency;

(2) local public bodies;

(3) the state agencies of other states and their local public bodies;

(4) agencies of the federal government;

(5) tribal and pueblo governments;

(6) nonprofit organizations properly registered under state law and supported wholly or in part by funds derived from public taxation;

(7) persons, partnerships, corporations or associations that provide public school transportation services to a state agency or local public body pursuant to contract;

(8) any business engaged primarily in the manufacture or resale of the same type of product;

(9) a person, partnership, corporation or association that provides correctional services to the corrections department pursuant to a contract; and

(10) a person, partnership, corporation or association that houses inmates on behalf of the corrections department.

B. Every product manufactured pursuant to the provisions of the Corrections Industries Act shall be distinctively identified as inmate-made by brand, label or mark consistent with the type and character of the product. Every product manufactured pursuant to the provisions of the Corrections Industries Act may be certified pursuant to the federal private sector prison industry enhancement certification program.

C. Any person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than one thousand dollars ($1,000) or to both imprisonment and fine in the discretion of the judge.

D. The provisions of this section shall not apply to products produced pursuant to Section 33-8-13 NMSA 1978.

E. Notwithstanding the provisions of Subsection A of this section, to assure the most effective use of state-owned land, produce from agricultural and animal husbandry enterprises may be sold to commercial sources upon review and recommendation of the commission and pursuant to procedures, including audit, established by the secretary of finance and administration."

Chapter 22 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 654

CHAPTER 23

RELATING TO LICENSE PLATES; EXPANDING ELIGIBILITY FOR VETERANS' REGISTRATION PLATES TO PERSONS RETIRED FROM THE NATIONAL GUARD AND MILITARY RESERVES.

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

Chapter 23 Section 1

Section 1. Section 66-3-419 NMSA 1978 (being Laws 1990, Chapter 46, Section 2, as amended) is amended to read:

"66-3-419. SPECIAL REGISTRATION PLATES FOR ARMED FORCES VETERANS.--

A. The department shall issue distinctive registration plates indicating that the recipient is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, or is retired from the national guard or military reserves, if that person submits proof satisfactory to the department of honorable discharge from the armed forces or of retirement from the national guard or military reserves.

B. For a fee of fifteen dollars ($15.00), which shall be in addition to the regular motor vehicle registration fees, any motor vehicle owner who is a veteran of the armed forces of the United States or is retired from the national guard or military reserves may apply for the issuance of a special registration plate as defined in Subsection A of this section. No two owners shall be issued identically lettered or numbered plates.

C. The fifteen-dollar ($15.00) fee provided in Subsection B of this section shall be waived for each registration period in which a validating sticker is issued under the provisions of Section 66-3-17 NMSA 1978, in lieu of the issuance of a special armed forces veteran plate.

D. Each armed forces veteran may elect to receive a veteran-designation decal to be placed across the top of the plate, centered above the registration number. Replacement or different veteran-designation decals shall be available for purchase from the department at a reasonable charge to be set by the secretary. The department shall furnish the following veteran-designation decals with the armed forces veteran plate to a:

(1) medal of honor recipient;

(2) silver star recipient;

(3) bronze star recipient;

(4) navy cross recipient;

(5) distinguished service cross recipient;

(6) air force cross recipient;

(7) ex-prisoner of war;

(8) disabled veteran;

(9) purple heart veteran;

(10) atomic veteran;

(11) Pearl Harbor survivor;

(12) Navajo code talker;

(13) Vietnam veteran;

(14) Korean veteran;

(15) disabled Korean veteran;

(16) World War II veteran;

(17) World War I veteran;

(18) Grenada veteran;

(19) Panama veteran; or

(20) Desert Storm veteran.

E. The revenue from the special registration plates for the armed forces veterans fee imposed by Subsection B of this section shall be distributed as follows:

(1) seven dollars ($7.00) of the fee collected for each registration plate shall be retained by the department and is appropriated to the department for the manufacture and issuance of the registration plates; and

(2) eight dollars ($8.00) of the fee collected for each registration plate shall be transferred pursuant to the provisions of Subsection F of this section.

F. There is created in the state treasury the "armed forces veterans license fund". A portion of the fee collected for each special registration plate for armed forces veterans, as provided in Subsection E of this section, shall be transferred to the state treasurer for the credit of the fund. Expenditures from the fund shall be made on vouchers issued and signed by the director of veterans' affairs upon warrants drawn by the department of finance and administration for the purpose of expanding services to rural areas of the state, including Native American communities and senior citizen centers. Any unexpended or unencumbered balance remaining at the end of any fiscal year in the armed forces veterans license fund shall not revert to the general fund."

HOUSE BILL 660

CHAPTER 24

RELATING TO STATE PAYROLL ADMINISTRATION; DEFINING "ANNUAL" FOR PURPOSES OF PAYROLL ADMINISTRATION; DECLARING AN EMERGENCY.

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

Chapter 24 Section 1

Section 1. A new Section 6-5-11 NMSA 1978 is enacted to read:

"6-5-11. "ANNUAL" DEFINED FOR PAYROLL ADMINISTRATION.--For the purpose of administering payroll for all branches of government, "annual" means fifty-two calendar weeks."

Chapter 24 Section 2

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

HOUSE BILL 862

CHAPTER 25

RELATING TO THE COMMISSION FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES; PROVIDING FOR APPOINTMENT TO THE COMMISSION OF TWO ADDITIONAL MEMBERS OF THE NEW MEXICO BAR; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 25 Section 1

Section 1. Section 2-4-1 NMSA 1978 (being Laws 1967, Chapter 234, Section 1, as amended) is amended to read:

"2-4-1. COMMISSION FOR PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES.--There is created a "commission for the promotion of uniformity of legislation in the United States". Its membership shall consist of:

A. two members appointed by the New Mexico legislative council, who shall be members of the legislature;

B. four members of the New Mexico bar, who shall be appointed by the New Mexico legislative council and who shall serve on the commission at their own expense;

C. the dean of the university of New Mexico law school or his designee; and

D. the director of the legislative council service, who shall serve ex officio.

The members shall be known as the "commissioners for the promotion of uniformity of legislation in the United States"."

Chapter 25 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 285

CHAPTER 26

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

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

Chapter 26 Section 1

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

A. the city of Albuquerque for the acquisition of computer equipment as specified in Subsection B of Section 1 of Chapter 72 of Laws 1998;

B. the Alpine Village sanitation district for a water project as specified in Subsection K of Section 1 of Chapter 8 of Laws 1996 (S.S.);

C. the city of Aztec for an electrical utility distribution system project as specified in Subsection L of Section 1 of Chapter 8 of Laws 1996 (S.S.);

D. Dona Ana county for a juvenile detention facility project and for the financing and refinancing of an adult detention facility project as specified in Subsection T of Section 1 of Chapter 72 of Laws 1998;

E. the village of Fort Sumner for a wastewater project as specified in Subsection I of Section 1 of Chapter 187 of Laws 1995;

F. the city of Grants for a land acquisition and business industrial park building project as specified in Subsection AA of Section 1 of Chapter 166 of Laws 1997;

G. the city of Las Cruces for a wastewater project as specified in Subsection V of Section 1 of Chapter 187 of Laws 1995;

H. the Lincoln county solid waste authority for a solid waste equipment project as specified in Subsection O of Section 1 of Chapter 166 of Laws 1997;

I. the village of Milan for a wastewater project as specified in Subsection UU of Section 1 of Chapter 72 of Laws 1998;

J. San Juan county for hospital capital projects as specified in Subsection BB of Section 1 of Chapter 187 of Laws 1995;

K. Santa Fe county for a parking facility project as specified in Subsection B of Section 1 of Chapter 8 of Laws 1996 (S.S.); and

L. the city of Truth or Consequences for the acquisition of a scraper as specified in Subsection VVV of Section 1 of Chapter 72 of Laws 1998.

Chapter 26 Section 2

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

SENATE BILL 81

CHAPTER 27

RELATING TO PUBLIC ASSISTANCE; ESTABLISHING A WORK PROGRAM AT PUBLIC SCHOOLS FOR NEW MEXICO WORKS ACT PARTICIPANTS.

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

Chapter 27 Section 1

Section 1. A new section of New Mexico Works Act is enacted to read:

"WORK PROGRAM--PUBLIC SCHOOLS.--The department and the state department of public education may establish a work program for participants to engage in a work activity pursuant to Subsection A of Section 27-2B-5 NMSA 1978 at public schools."

SENATE BILL 97, AS AMENDED

CHAPTER 28

RELATING TO STATE FUNDS; MAKING AN APPROPRIATION OF THE BALANCE OF THE NEW MEXICO TECH SINKING FUND TO THE BOARD OF REGENTS OF THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY FOR CERTAIN PURPOSES; REPEALING A CERTAIN SECTION OF THE NMSA 1978.

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

Chapter 28 Section 1

Section 1. APPROPRIATION.--The balance of the New Mexico tech sinking fund is appropriated to the board of regents of the New Mexico institute of mining and technology for the purpose of expanding science and technology programs. Unexpended or unencumbered balances shall not revert at the end of any fiscal year.

Chapter 28 Section 2

Section 2. REPEAL.--Section 21-11-28 NMSA 1978 (being Laws 1982, Chapter 4, Section 5) is repealed.

SENATE BILL 463

CHAPTER 29

MAKING AN APPROPRIATION FOR CONTINUATION OF A STATEWIDE ASSESSMENT OF NURSING NEEDS; DECLARING AN EMERGENCY.

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

Chapter 29 Section 1

Section 1. APPROPRIATION--PURPOSE.--One hundred fifty thousand dollars ($150,000) is appropriated from the board of nursing fund to the board of nursing for expenditure in fiscal years 1999 through 2002 to contract for a statewide study of the need for additional nurses and the types of education and training necessary to meet New Mexico's health care demands. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the board of nursing fund.

Chapter 29 Section 2

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

SENATE BILL 83

CHAPTER 30

RELATING TO SECURITIES; AMENDING SECTIONS OF THE NEW MEXICO SECURITIES ACT OF 1986.

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

Chapter 30 Section 1

Section 1. Section 58-13B-2 NMSA 1978 (being Laws 1986, Chapter 7, Section 2, as amended) is amended to read:

"58-13B-2. DEFINITIONS.--As used in the New Mexico Securities Act of 1986:

A. "affiliate" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person;

B. "broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. Broker-dealer does not include:

(1) a sales representative;

(2) an issuer, except when effecting transactions other than with respect to its own securities;

(3) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for a depository institution pursuant to applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of the depository institution; or

(4) any other person as the director by rule or order designates;

C. "control person" means an officer, director, managing partner or trustee, manager of a limited liability company or person of similar status or function or any security holder who owns beneficially or of record ten percent or more of any class of securities of an issuer;

D. "depository institution":

(1) means:

(a) a person that is organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to receive deposits, including a savings, share, certificate or deposit account, is regulated, supervised and examined for the protection of depositors by an official or agency of a state or the United States and is insured by the federal depository insurance corporation, the federal savings and loan insurance corporation or the national credit union share insurance fund; and

(b) a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is regulated, supervised and examined by an official or agency of a state or the United States; and

(2) does not include an insurance company or other organization primarily engaged in the insurance business or a Morris plan bank, industrial loan company or a similar bank or company;

E. "director" means the director of the securities division of the regulation and licensing department;

F. "division" means the securities division of the regulation and licensing department;

G. "federal covered security" means any security described as a "covered security" in the federal Securities Act of 1933;

H. "filed" means the receipt of a document or application by the director or by the authorized representative of the director at the principal office of the director;

I. "financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity, other than as an agent:

(1) a depository institution;

(2) an insurance company;

(3) a separate account of an insurance company;

(4) an investment company as defined in the Investment Company Act of 1940;

(5) an employee pension, profit-sharing or benefit plan, if:

(a) the plan has total assets in excess of five million dollars ($5,000,000); or

(b) investment decisions are made by a plan fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution or an insurance company;

(6) a business development company as defined by the Investment Company Act of 1940;

(7) a small business investment company licensed by the United States small business administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; or

(8) any other financial or institutional investor as the director by rule or order designates;

J. "fraud", "deceit" and "defraud" are not limited to common-law fraud or deceit;

K. "guaranteed" means guaranteed as to payment of principal, interest and dividends;

L. "insured" means insured as to payment of principal, interest and dividends;

M. "investment adviser":

(1) means a person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities; and

(2) does not include:

(a) an investment adviser representative;

(b) a depository institution when acting on its own account or when exercising trust or fiduciary powers permitted for such depository institutions under applicable state or federal laws and regulations providing for the organization, operation, supervision and examination of such depository institution;

(c) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the person's profession;

(d) a broker-dealer whose performance of the investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for the investment advisory services;

(e) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication, or an owner, operator, producer or employee of a cable, radio or

television network, station or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; or

(f) any other person as the director by rule or order designates;

N. "investment adviser representative" means:

(1) with respect to an investment adviser that is registered or required to register pursuant to the New Mexico Securities Act of 1986, a natural person other than an investment adviser who, whether as an employee or in the form of a professional corporation is under the direct supervision of an investment adviser and engages in the business of advising others as to the value of securities or about the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; or

(2) with respect to an investment adviser registered with the United States securities and exchange commission, an "investment adviser representative" who has a "place of business" in the state as those terms are defined by rule pursuant to Section 203 of the Investment Advisers Act of 1940;

O. "issuer" means a person that issues or proposes to issue a security, except that:

(1) in respect to the issuer of a collateral trust certificate, voting trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or persons performing similar functions, "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(2) in respect to the issuer of an equipment trust certificate, including a conditional sales contract, or similar security serving the same purpose, "issuer" means the person to whom the equipment or property is or is to be leased or conditionally sold; and

(3) in respect to the issuer of an interest in oil, gas or other mineral rights "issuer" means the owner of an interest in such a right, whether whole or fractional, who creates interests for the purposes of sale;

P. "non-issuer transaction" means a transaction not directly or indirectly for the benefit of the issuer;

Q. "person" means a legal entity;

R. "price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if no amendment is filed, the prospectus or prospectus

supplement filed under the Securities Act of 1933, that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price;

S. "promoter" includes:

(1) a person who, acting alone or in concert with one or more other persons, takes the entrepreneurial initiative in founding or organizing the business or enterprise of an issuer;

(2) an officer or director or person of similar status or function owning any securities of an issuer or any security holder who owns, beneficially or of record, ten percent or more of any class of securities of the issuer if the officer, director, person of similar status or security holder acquires any of those securities in a transaction which does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer; or

(3) a member of the immediate family of a person described in Paragraph (1) or (2) of this subsection if the family member received the securities in a transaction that does not possess the indicia of arm's-length bargaining or which is otherwise unfair to the issuer;

T. the following words and phrases have the indicated meanings:

(1) "sale" or "sell" includes every contract of sale, contract to sell or other disposition of a security or interest in a security for value;

(2) "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value;

(3) "offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value;

(4) a security given or delivered with, or as a bonus on account of, a purchase of securities or other item is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(5) a gift of assessable stock is deemed to involve an offer and sale; and

(6) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, or a sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is deemed to include an offer of the other security;

U. the terms defined in Subsection T of this section do not include the creation of security interest or a loan of a security; a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by

stockholders for the dividend other than the surrender of a right to a cash or property dividend and each stockholder may elect to take the dividend in cash, property or stock; or an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in exchange and partly for cash, but the terms contained in this subsection are within the meaning of Subsection T of this section for the purpose of Section 58-13B-30 NMSA 1978;

V. "sales representative" means an individual other than a broker-dealer, whether as an employee or in the form of a professional corporation, authorized to act and acting for a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if that person otherwise comes within the definition;

W. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Investment Advisers Act of 1940", "Employee Retirement Income Security Act of 1974", "National Housing Act" and "Commodity Exchange Act" mean the federal statutes of those names as amended before or after the effective date of the New Mexico Securities Act of 1986;

X. unless the context requires otherwise, "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; any interest in a limited liability company; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; any interest in oil, gas or other mineral rights; any put, call, straddle or option entered into on a national securities exchange relating to foreign currency; any put, call, straddle or option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include landowner royalties in the production of oil, gas or other minerals created through the execution of a lease of the lessor's mineral interest;

Y. "self-regulatory organization" means a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, a national securities association of brokers and dealers registered under Section 15A of the Securities Exchange Act of 1934, a clearing agency registered under Section 17A of that act and the municipal securities rulemaking board established under Section 15B(b)(1) of that act;

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

AA. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security, or participates or has a direct or indirect participation in any the undertaking, or participates or has a participation in the direct or indirect underwriting of any the undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this subsection, the term "issuer" includes, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

Chapter 30 Section 2

Section 2. Section 58-13B-5 NMSA 1978 (being Laws 1986, Chapter 7, Section 5, as amended) is amended to read:

"58-13B-5. INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE LICENSING.--

A. It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless:

(1) the person is licensed or exempt from licensing under the New Mexico Securities Act of 1986; (2) the person is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 and the person has filed the documents and paid the fees described in Subsection (C) of that section;

(3) the person is an investment adviser representative employed by, supervised by or associated with an investment adviser described in Paragraph (2) of this subsection and the person has no place of business in this state;

(4) the person is excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; or

(5) the person is an investment adviser representative employed by, supervised by or associated with a person described in Paragraph (4) of this subsection.

B. It is unlawful for an investment adviser to employ or contract with, in connection with any of the investment adviser's investment adviser activities in this state, any person who is suspended or barred from association with a broker-dealer or investment adviser by the director. Upon request from an investment adviser and for good cause shown, the director by order may waive the prohibition of this subsection with respect to a person who has been suspended or barred.

C. Except with respect to investment advisers whose only clients are those described in Subsection A of Section 58-13B-6 NMSA 1978, it is unlawful for any person who is registered or required to be registered under Section 203 of the Investment Advisers Act

of 1940 as an investment adviser to conduct advisory business in this state unless such person files such documents filed with the United States securities and exchange commission with the director as the director may by rule or by order require, and a fee and consent to service of process, as the director, by rule or by order, may require."

Chapter 30 Section 3

Section 3. Section 58-13B-21 NMSA 1978 (being Laws 1986, Chapter 7, Section 21) is amended to read:

"58-13B-21. REGISTRATION BY FILING.--

A. Securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the securities may be registered by filing, whether or not they are also eligible for registration under Section 58-13B-22 or 58-13B-23 NMSA 1978 if the following conditions are satisfied:

(1) the issuer is organized under the laws of the United States or a state or, if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process;

(2) the issuer has actively engaged in business operations in the United States for a period of at least thirty-six consecutive calendar months immediately before the filing of the federal registration statement;

(3) the issuer has registered a class of equity securities under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, which class of securities is held of record by five hundred or more persons;

(4) the issuer has:

(a) a total net worth of four million dollars ($4,000,000), or a total net worth of two million dollars ($2,000,000) and net pretax income from operations before allowances for extraordinary items, for at least two of the three preceding fiscal years;

(b) not less than four hundred thousand units of the class of security registered under Section 12 of the Securities Exchange Act of 1934 held by the public, excluding securities held by officers and directors of the issuer, underwriters and persons beneficially owning ten percent or more of the class of security being registered; and

(c) outstanding warrants and options held by the underwriters and executive officers and directors of the issuer in an amount not exceeding ten percent of the total number of shares to be outstanding after completion of the offering of the securities being registered;

(5) the issuer has been subject to the requirements of Section 12 of the Securities Exchange Act of 1934 and has filed all the material required to be filed under Sections 13 and 14 of that act for at least thirty-six calendar months immediately before the filing of the federal registration statement and the issuer has filed in a timely manner all reports required to be filed during the twelve calendar months immediately before the filing of the federal registration statement;

(6) for a period of at least thirty days during the three months preceding the offering of the securities registered, there have been at least four market makers for the class of equity securities registered under Section 12 of the Securities Exchange Act of 1934;

(7) each of the underwriters participating in the offering of the security and each broker-dealer who will offer the security in this state is a member of or is subject to the rules of fair practice of a national association of securities dealers with respect to the offering and the underwriters have contracted to purchase the securities offered in a principal capacity;

(8) the aggregate commissions or discounts to be received by the underwriters will not exceed ten percent of the aggregate price at which the securities being registered are offered to the public;

(9) neither the issuer nor any of its subsidiaries, during the last three fiscal years preceding the filing of the registration statement, have:

(a) failed to pay a dividend or sinking fund installment on preferred stock;

(b) defaulted on indebtedness for borrowed money; or

(c) defaulted on the rental on one or more long-term leases; which defaults in the aggregate are material to the financial position of the issuer and its subsidiaries, taken as a whole; and

(10) in the case of an equity security, the price at which the security will be offered to the public is not less than five dollars ($5.00) per share.

B. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection D of Section 58-13B-24 NMSA 1978 and the consent to service of process required by Section 58-13B-50 NMSA 1978:

(1) a statement demonstrating eligibility for registration by filing;

(2) the name, address and form of organization of the issuer;

(3) with respect to a person on whose behalf a part of the offering is to be made in a non-issuer distribution: name and address; the amount of securities of the issuer held

by the person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

(4) a copy, specimen or description of the security being registered; and

(5) a copy of the latest prospectus filed with the registration statement under and satisfying the requirements of Section 10 of the Securities Act of 1933.

C. If the information and documents required to be filed by Subsection B of this section have been on file with the director for at least five business days and if the applicable registration fee has been paid prior to the effectiveness of the federal registration statement and no stop order is in effect and no proceeding is pending under Section 58-13B-25 NMSA 1978, a registration statement under this section automatically becomes effective concurrently with the effectiveness of the federal registration statement. If the federal registration statement becomes effective before the conditions in this subsection are satisfied and they are not waived, the registration statement becomes effective as soon as the conditions are satisfied. The registrant shall promptly notify the director of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file promptly a post-effective amendment containing the information and documents in the price amendment. The director shall promptly acknowledge receipt of notification and effectiveness of the registration statement as of the date and time the registration statement became effective with the securities and exchange commission."

Chapter 30 Section 4

Section 4. Section 58-13B-24 NMSA 1978 (being Laws 1986, Chapter 7, Section 24, as amended) is amended to read:

"58-13B-24. PROVISIONS APPLICABLE TO REGISTRATION GENERALLY.--

A. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a registered broker-dealer.

B. If a registration statement is withdrawn before the effective date or a pre-effective stop order is entered pursuant to Section 58-13B-25 NMSA 1978, the director shall retain the fee set forth in this subsection. A person filing a registration statement shall pay a filing fee of:

(1) one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in New Mexico, but not less than five hundred twenty-five dollars ($525) or more than two thousand five hundred dollars ($2,500); or

(2) five hundred twenty-five dollars ($525) if the person is a corporate issuer or a person acting on behalf of a corporate issuer and is claiming an exemption from the registration

requirements of federal law regarding small corporate offerings pursuant to Rule 504 of Regulation D (17 CFR 230.504).

C. A registration statement must specify the amount of securities to be offered in New Mexico and:

(1) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(2) any adverse order, judgment or decree entered by the securities agency or administrator in any state or by a court or the securities and exchange commission in connection with the offering.

D. A document filed pursuant to the New Mexico Securities Act of 1986 or a predecessor act, within five years before the filing of a registration statement, may be incorporated by reference in the registration statement if the document is currently accurate.

E. The director by rule or order may permit the omission of an item of information or document from a registration statement.

F. In the case of a non-issuer offering, the director may not require information pursuant to Section 58-13B-23 NMSA 1978 or Subsection L of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the offering is to be made, or can be furnished by them without unreasonable effort or expense.

G. In the case of a registration pursuant to Section 58-13B-22 or 58-13B-23 NMSA 1978 by an issuer who has no public market for its shares and no significant earnings from continuing operations during the last five years or any shorter period of its existence, the director by rule or order may require as a condition of registration that the following securities be deposited in escrow for not more than three years:

(1) a security issued to a promoter, control person or affiliate within the three years immediately before the offering or to be issued to such persons for a consideration substantially less than the offering price; and

(2) a security issued to a promoter, control person or affiliate for a consideration other than cash, unless the registrant demonstrates that the value of the noncash consideration received in exchange for the security is substantially equal to the offering price for the security.

The director by rule or order may determine the conditions of an escrow required pursuant to this subsection, but the director may not reject a depository solely because of location in another state.

H. The director by rule or order may require as a condition of registration pursuant to Section 58-13B-22 or 58-13B-23 NMSA 1978 that the proceeds from the sale of the registered security in New Mexico be impounded until the issuer receives a specified amount from the sale of the security. The director by rule or order may determine the conditions of an impoundment arrangement required pursuant to this subsection, but the director may not reject a depository solely because of its location in another state.

I. If a security is registered pursuant to Section 58-13B-21 or 58-13B-22 NMSA 1978, the prospectus filed pursuant to the federal Securities Act of 1933 shall be delivered to each purchaser in accordance with the prospectus delivery requirements of the federal Securities Act of 1933. With respect to a security registered pursuant to Section 58-13B-21 or 58-13B-22 NMSA 1978, the director by rule or order may require the delivery of other material documents or information to each purchaser concurrent with or prior to the delivery of the prospectus.

J. If a security is registered pursuant to Section 58-13B-23 NMSA 1978, an offering document containing information the director by rule or order designates shall be delivered to each purchaser with or before the earliest of:

(1) the first written offer made to the purchaser by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by it as a participant in the distribution;

(2) confirmation of a sale made by or for the account of a person named in Paragraph (1) of this subsection;

(3) payment pursuant to a sale; or

(4) delivery pursuant to a sale.

K. A registration statement remains effective for one year after its effective date unless the director by rule or order extends the period of effectiveness. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a non-issuer transaction while the registration statement is effective, unless the director by rule or order provides otherwise. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in New Mexico, unless the director by rule or order provides otherwise. No registration statement is effective while a stop order is in effect pursuant to Subsection A of Section 58-13B-25 NMSA 1978.

L. During the period that an offering is being made pursuant to an effective registration statement, the director by rule or order may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

M. A registration statement filed pursuant to Section 58-13B-21 or 58-13B-22 NMSA 1978 may be amended after its effective date to increase the securities specified to be offered and sold. The amendment becomes effective upon filing of the amendment and payment of an additional filing fee, which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold. The effectiveness of the amendment relates back to the dates of sale of the additional securities being registered.

N. A registration statement filed pursuant to Section 58-13B-23 NMSA 1978 may be amended after its effective date to increase the securities specified to be offered and sold, provided that the public offering price and underwriters' discounts and commissions are not changed from the respective amounts of which the director was informed. The amendment becomes effective when the director so orders and relates back to the date of sale of the additional securities being registered. A person filing an amendment shall pay an additional filing fee, which shall be three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold.

O. Pursuant to Section 106(c) of the federal Secondary Mortgage Market Enhancement Act of 1984, any securities that are offered and sold pursuant to Section 4(5) of the federal Securities Act of 1933 or that are mortgage-related securities, as that term is defined in Section 3(a)(41) of the federal Securities Exchange Act of 1934, being 15 U.S.C. 78c(a)(41), are required to comply with all applicable registration and qualification requirements of the New Mexico Securities Act of 1986 and the rules pursuant to that act and shall not be treated as obligations issued by the United States for purposes of that act.

P. With respect to a federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1933, that is not otherwise exempt pursuant to Section 58-13B-26 or 58-13B-27 NMSA 1978:

(1) prior to the offer of the security in New Mexico, the following shall be filed by or on behalf of the issuer:

(a) a notice of intent to sell the security that provides: 1) the name and address of the issuer; 2) a description of the securities to be offered; 3) the name, address and telephone number of an authorized contact person; and 4) other information that the director may, by rule or by order, require;

(b) a consent to service of process; and

(c) a notification fee in the amount of 1) five hundred twenty-five dollars ($525) for all investment companies other than a unit investment trust; or 2) two hundred dollars ($200) for a unit investment trust; and

(2) except as otherwise provided in this paragraph, the notice of intent and fee filed pursuant to Paragraph (1) of this subsection shall be effective for a period of one year from the date of filing with the director. A notice filing by or on behalf of a unit investment trust is effective from receipt until one year from the date of effectiveness of the offering with the United States securities and exchange commission.

Q. With respect to any security that is a federal covered security pursuant to Section 18(b)(4)(D) of the federal Securities Act of 1933, the director, by rule or by order, may require the issuer to file, no later than fifteen days after the first sale of the federal covered security in New Mexico, a notice containing the information required by SEC Form D and a consent to service of process signed by the issuer, together with a notification fee in the amount of three hundred fifty dollars ($350).

R. The director, by rule or by order, may require the filing of any document filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933 with respect to a federal covered security pursuant to Section 18(b)(3) or (4) of the federal Securities Act of 1933, together with a fee to be determined by the director.

S. The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security pursuant to Section 18(b)(1) of the federal Securities Act of 1933, if he finds that:

(1) the order is in the public interest; and

(2) there is a failure to comply with any condition established pursuant to this section.

T. The director, by rule or otherwise, may waive any or all of the provisions of this section."

Chapter 30 Section 5

Section 5. Section 58-13B-26 NMSA 1978 (being Laws 1986, Chapter 7, Section 26, as amended) is amended to read:

"58-13B-26. EXEMPT SECURITIES.--The following securities are exempt from Section 58-13B-20, Subsection P of Section 58-13B-24 and Section 58-13B-29 NMSA 1978:

A. a security, including a revenue obligation, issued, insured or guaranteed by the United States, an agency or corporate or other instrumentality of the United States, an international agency or corporate or other instrumentality of which the United States and one or more foreign governments are members, a state, political subdivision of a state or an agency or corporate or other instrumentality, including the New Mexico mortgage finance authority, of one or more states or their political subdivisions; or a certificate of deposit for any of the foregoing, but this exemption does not include a security payable solely from revenues to be received from a nongovernmental industrial or commercial

enterprise unless such security is directly or indirectly insured or guaranteed by, or such revenues are derived from, a person whose securities are exempt from registration by this subsection or Subsection B, C, D or E of this section; for purposes of this subsection, a nongovernmental industrial or commercial enterprise does not include the financing of student loans or single-family residential mortgage loans;

B. a security issued or guaranteed by Canada, a Canadian province or territory, a political subdivision of Canada or a Canadian province or territory, an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government or governmental combination or entity with which the United States maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

C. a security issued by and representing an interest in or a direct obligation of or a guarantee of a depository institution if the deposit or share accounts of the depository institution are insured by the federal deposit insurance corporation, the federal savings and loan insurance corporation, the national credit union share insurance fund or a successor to the applicable agency created by federal law;

D. a security issued by and representing an interest in or direct obligation of or a guarantee of an insurance company organized under the laws of any state and authorized to do insurance business in this state;

E. a security issued or guaranteed by a public utility or holding company which is:

(1) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of that act;

(2) regulated in respect to its rates and charges by a governmental authority of the United States or a state; or

(3) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada or a Canadian province or territory;

F. certificates of participation in real property leases or equipment trust certificates in respect of equipment leased or conditionally sold to a person, if securities issued by the person would be exempt under this section;

G. an option issued by a clearing agency registered under the Securities Exchange Act of 1934, other than an off-exchange futures contract or substantially similar arrangement, if the security, currency, commodity or other interest underlying the option:

(1) is registered under Section 58-13B-21, 58-13B-22 or 58-13B-23 NMSA 1978;

(2) is exempt under this section; or

(3) is not otherwise required to be registered under the New Mexico Securities Act of 1986;

H. a security issued by a person organized and operated not for private profit but exclusively for a religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purpose, or a chamber of commerce or trade or professional association. The director may require by rule or order that a notice setting forth the material terms of the proposed sale and copies of any sales and advertising literature to be used be filed ten days prior to the sale of the security;

I. a promissory note, draft, bill of exchange or banker's acceptance that evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace, is issued in denominations of at least fifty thousand dollars ($50,000) and receives a rating in one of the three highest rating categories from a nationally recognized securities rating organization; or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation or of a renewal;

J. an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

K. a security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan;

L. a membership or equity interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of any state if not traded to the public; and

M. a security listed or approved for listing upon notice of issuance on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated or approved for designation upon issuance for inclusion on the national market system by the National Association of Securities Dealers, Inc., provided that such exchange or national marketing system shall be approved by rule or order of the director and subject to any additional requirements or conditions imposed by the director."

Chapter 30 Section 6

Section 6. Section 58-13B-27 NMSA 1978 (being Laws 1986, Chapter 7, Section 27, as amended) is amended to read:

"58-13B-27. EXEMPT TRANSACTIONS.--The following transactions are exempted from Section 58-13B-20 and Subsection P of Section 58-13B-24 NMSA 1978 and, unless otherwise noted, Section 58-13B-29 NMSA 1978:

A. an isolated non-issuer transaction, whether or not effected through a broker-dealer;

B. a non-issuer transaction in a security by a registered broker-dealer if:

(1) the issuer of the security has a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934;

(2) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety-day period immediately preceding the date of the offer or sale or is an issuer of a security covered by Section 12(g)(2)(B) or (G) of that 1934 act;

(3) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to the provisions of Section 13 or Section 15(d), as the case may be, of the Securities Exchange Act of 1934 or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(G)(2)(G)(i) of the Securities Exchange Act of 1934; and

(4) the broker-dealer has in its records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the securities, the issuer's most recent annual report filed pursuant to Section 13 or 15(d), as the case may be, of the Securities Exchange Act of 1934 or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(G)(2)(G) thereof, together with any other reports required to be filed at regular intervals under the Securities Exchange Act of 1934 by the issuer after such annual report or annual statement; provided that the making available of such reports pursuant to this paragraph, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that the information is reasonably current; or

(5) the issuer has filed and maintained with the director, for not less than ninety days before the transaction, information in such form as the director by rule specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under Section 12 of the Securities Exchange Act of 1934, and under either Subparagraph (1) or (2), the issuer has paid a fee of five hundred dollars ($500);

C. a non-issuer transaction in a security:

(1) of a class outstanding in the hands of the public for not less than one hundred eighty days before the transaction if a nationally recognized securities manual designated by the director by rule or order contains the names of the issuer's officers and directors, a statement of financial condition of the issuer as of a date within the last eighteen months

and a statement of income or operations for either the last fiscal year before the date or the most recent year of operation; or

(2) if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security; provided that the director may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption;

D. any non-issuer transaction effected by or through a registered broker-dealer registered in this state pursuant to an unsolicited order or offer to buy; provided that the director by rule shall require that the broker-dealer have the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of that form be preserved by the broker-dealer for a specified period;

E. a transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter or a transaction among underwriters;

F. a transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

G. a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

H. a transaction executed by a bona fide secured party without a purpose of evading the New Mexico Securities Act of 1986;

I. an offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer;

J. the issuance and offer and sale of securities by any corporation or limited liability company or any offer or sale of limited partnership interests by a limited partnership if:

(1) in the case of a corporation or limited liability company, its principal office and a majority of its full-time employees are located in this state or, in the case of a limited partnership, its principal place of business and eighty percent of its assets are located in this state;

(2) at least eighty percent of the proceeds from the offering shall be used by the issuer in operations of the issuer in this state;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986;

(4) an offering document is delivered to each purchaser or prospective purchaser prior to the sale of the securities disclosing such information as the director by rule or order may require;

(5) the total offering, including interest on installment payments, does not exceed one million five hundred thousand dollars ($1,500,000); and

(6) the issuer claiming this exemption files notice with the director on a form prescribed by the director prior to the first offer and pays a fee of three hundred fifty dollars ($350). The director may require any issuer using this exemption to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering. The director may impose conditions by rule or order with respect to issuers, broker-dealers or affiliates who by reason of prior misconduct will not be eligible to utilize this exemption. The issuance and offer and sale of securities pursuant to this subsection shall be subject to Section 58-13B-29 NMSA 1978;

K. the issuance and offer and sale of securities by any corporation or limited liability company or any offer or sale of limited partnership interests by a limited partnership if:

(1) in the case of a corporation or limited liability company, the total number of security holders does not and will not in consequence of the sale exceed twenty-five or, in the case of a limited partnership, the number of limited partners does not and will not in consequence of the sale exceed twenty-five;

(2) the issuer reasonably believes that all buyers are purchasing for investment;

(3) no public advertising or general solicitation is used in connection with the offer or sale; and

(4) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986.

The director by rule or order may impose additional requirements as a condition of the exemption established in this subsection as necessary for the protection of investors and to specify its application. Any notice filing that may be imposed pursuant to Subsection C of Section 58-13B-28 NMSA 1978 shall not be deemed a condition of this exemption;

L. any offer or sale of a preorganization certificate or subscription if:

(1) such sale or offer is made by an agent, the agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act;

(2) no public advertising or general solicitation is used in connection with the offer or sale;

(3) the number of subscribers does not exceed ten; and

(4) either no payment is made by any subscriber or any payment made by a subscriber is put into escrow until the entire issue is subscribed;

M. an offer or sale of a preorganization certificate or subscription agreement issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of any state or of the United States which has and exercises the authority to regulate and supervise the depository institution. For the purpose of this subsection, supervision of an organization by an official or agency means that the official or agency by law has authority to:

(1) require disclosures to prospective investors similar to that required under Section 58-13B-23 NMSA 1978;

(2) impound proceeds from the sale of preorganization certificates or subscription agreements until organization of the depository institution is completed; and

(3) require a refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency except that the official or agency with the authority to require a refund need not include such amounts as the official or agency has by law determined to be proper organizational expenditures;

N. a transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than ninety days of their issuance, convertible securities or nontransferable warrants, if:

(1) no commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(2) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

O. a transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(1) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed but is not effective;

(2) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(3) no stop order has been entered by the director, the securities and exchange commission or other state's securities agency, and no proceeding or examination that may culminate in that kind of order is pending;

P. a transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(1) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(2) no stop order has been entered by the director, other state securities agencies or the securities and exchange commission and no proceeding or examination that may culminate in that kind of order being issued by the director is pending;

Q. a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent and subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) the securities to be distributed are registered under the Securities Act of 1933 and written notice of the transaction is given to the director prior to the consummation of the transaction; or

(2) if the securities to be distributed are not required to be registered under the Securities Act of 1933, and written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the director at least ten days before the consummation of the transaction and the director does not disallow by order the exemption within the next ten days;

R.

(1) a transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price paid by each purchaser may not be less than two hundred fifty thousand dollars ($250,000);

(b) each purchaser must pay cash either at the time of the sale or within sixty days after the sale; and

(c) each purchaser may buy for that person's own account only;

(2) a transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participation interests in the notes, if the notes and participation interests are originated by a mortgagee approved by the secretary of housing and urban development under Sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in Paragraph (1) of this subsection, to a depository institution or insurance company, the federal home loan mortgage corporation, the federal national mortgage association or the government national mortgage association; and

(3) a transaction between any of the persons described in Paragraph (2) of this subsection involving a nonassignable contract to buy or sell the securities described in Paragraph (1) of this subsection, which contract is to be completed within two years, if:

(a) the seller of the securities pursuant to the contract is one of the parties described in Paragraph (1) or (2) of this subsection who may originate securities;

(b) the purchaser of securities pursuant to any contract is any other institution described in Paragraph (2) of this subsection; and

(c) the three conditions described in Paragraph (1) of this subsection are fulfilled;

S. any transaction involving leases or interests in leases in oil, gas or other mineral rights between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business. For purposes of this subsection, a party "engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business" means:

(1) any corporation, limited liability company, partnership or other business entity that is directly engaged in and derives at least eighty percent of its annual gross income from the exploration or production of oil, gas or other valuable minerals;

(2) any general partner or any employee who spends at least eighty percent of his work time in the daily management of a business entity that is directly engaged in and derives at least eighty percent of its gross annual income from the exploration or production of oil, gas or other valuable minerals; or

(3) any corporation, limited liability company, partnership or other business entity that is directly engaged in the business of exploration and production of oil, gas or other valuable minerals and derives at least five million dollars ($5,000,000) of annual gross income from such business;

T. any transaction involving the sale or offer of interests in and under oil, gas or mining rights located in New Mexico or fees, titles or contracts relating thereto, or such sale or

offer of such interests, wherever located, made by an entity principally operating in New Mexico where:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided, in any oil, gas or mineral lease, fee or title or contract relating thereto, shall not exceed twenty-five, provided that such sales shall be made only to persons meeting suitability standards established by rule or order of the director and that investors are provided with such disclosure documents and other information as the director may require by rule or order;

(2) no use is made of advertisement or public solicitation; and

(3) if such sale or offer is made by an agent for such owner or owners, such agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act; and

U. a transaction pursuant to an offer to sell securities of an issuer if:

(1) the transaction is part of an issue in which there are no more than ten purchasers in this state during any twelve consecutive months;

(2) no general solicitation or general advertising is used in connection with the offer to sell or the sale of the securities;

(3) no commission or other remuneration is paid or given, directly or indirectly, to a person other than a broker-dealer licensed or not required to be licensed pursuant to the New Mexico Securities Act of 1986 for soliciting a prospective purchaser in this state; and either

(4) the seller reasonably believes that all of the purchasers in this state are purchasing for investment; or

(5) immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by fifty or fewer beneficial owners and the transaction is part of an aggregate offering that does not exceed five hundred thousand dollars ($500,000) during any twelve consecutive months; but the director, by rule or order as to a security or transaction or a type of security or transaction, may withdraw or further condition this exemption or may waive one or more of the conditions of this subsection.

For the purposes of Subsection T of this section, "principally operating in New Mexico" means a corporation or limited liability company organized under the law of this state, a corporation in which a majority in interest of the shareholders are residents of this state, a limited liability company in which a majority in interest of the members are residents of this state, a partnership in which a majority in interest of the partners are residents of

this state, a trust in which a majority in interest of the beneficiaries are residents of this state or a sole proprietorship in which the owner is a resident of this state."

Chapter 30 Section 7

Section 7. Section 58-13B-33 NMSA 1978 (being Laws 1986, Chapter 7, Section 33) is amended to read:

"58-13B-33. PROHIBITED TRANSACTIONS BY INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.--

A. It is unlawful for an investment adviser or an investment adviser representative to, directly or indirectly:

(1) employ a device, scheme or artifice to defraud a client; or

(2) engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon a client.

B. It is unlawful for any investment adviser or investment adviser representative to enter into, extend or renew any written investment advisory contract unless it provides that:

(1) no share of capital gain upon or capital appreciation of the funds or portion of the funds of the client shall be used as a basis for the determination of the compensation of the investment adviser;

(2) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

C. Paragraph (1) of Subsection B of this section does not:

(1) apply to investment advisers registered pursuant to Section 203 of the Investment Advisers Act of 1940 or exempt from registration pursuant to Section 202(a)(11) of that act; or

(2) prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. As used in Paragraph (2) of Subsection B of this section, "assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result

from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

Chapter 30 Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 198, AS AMENDED

CHAPTER 31

RELATING TO GAME AND FISH; PROVIDING THAT THE JAGUAR IS TO BE PROTECTED; PROVIDING FOR CRIMINAL AND CIVIL PENALTIES; PROVIDING PENALTIES FOR VIOLATION OF A CERTAIN SECTION OF THE NMSA 1978.

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

Chapter 31 Section 1

Section 1. A new Section 17-2-4.1 NMSA 1978 is enacted to read:

"17-2-4.1. JAGUAR TO BE PROTECTED.--In the event the jaguar is de-listed as a federal endangered species, the department of game and fish shall prohibit the taking, possession and sale of jaguars or parts thereof."

Chapter 31 Section 2

Section 2. Section 17-2-10 NMSA 1978 (being Laws 1931, Chapter 117, Section 7, as amended by Laws 1997, Chapter 119, Section 1 and also by Laws 1997, Chapter 224, Section 1) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR REGULATIONS--PENALTIES.--

A. Any person violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed six months. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars ($400);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars ($1,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars ($100);

(4) for exceeding the bag limit of any big game species, a fine of four hundred dollars ($400);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars ($200);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars ($400);

(7) for using a hunting or fishing license issued to another person, a fine of one hundred dollars ($100);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars ($300);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars ($1,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of two thousand dollars ($2,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of five hundred dollars ($500).

B. A person convicted a second time for violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars ($600);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand five hundred dollars ($1,500);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars ($400);

(4) for exceeding the bag limit of any big game species, a fine of six hundred dollars ($600);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars ($600);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars ($600);

(7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars ($250);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars ($500);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars ($1,500);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of four thousand dollars ($4,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of one thousand dollars ($1,000).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred, and not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars ($1,200);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars ($3,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars ($1,000);

(4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars ($1,200);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars ($1,000);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars ($1,200);

(7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars ($1,000);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars ($1,000);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars ($3,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of six thousand dollars ($6,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of two thousand dollars ($2,000).

D. Any person who is convicted of a violation of any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped or of a violation of any of the provisions of Chapter 17 NMSA 1978, for which a punishment is not set forth under this section, shall be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500) or imprisoned not more than six months or both.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to regulations of the department."

Chapter 31 Section 3

Section 3. Section 17-2-26 NMSA 1978 (being Laws 1912, Chapter 85, Section 45, as amended) is amended to read:

"17-2-26. CIVIL LIABILITY.--

A. The director of the department of game and fish, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadruped, bird or fish, or part thereof, and recover judgment for the following minimum sums as damage for the taking, killing or injuring:

for each elk--------------------------- $ 500.00

for each deer---------------------------- 250.00

for each antelope------------------------ 250.00

for each mountain sheep----------------1,000.00

for each Barbary sheep------------------- 250.00

for each black bear----------------------- 500.00

for each cougar-------------------------- 500.00

for each bison--------------------------- 600.00

for each ibex----------------------------1,000.00

for each oryx----------------------------1,000.00

for each javelina---------------------------100.00

for each beaver--------------------------- 65.00

for each bird------------------------------ 20.00

for each fish------------------------------- 5.00

for each endangered species---------------500.00

for each raptor----------------------------200.00

for each turkey----------------------------150.00

for each jaguar--------------------------2,000.00.

B. No verdict or judgment recovered by the state in an action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery may be had for the possession as well as the damages.

C. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

E. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to regulations of the department."

SENATE BILL 252, AS AMENDED

RELATING TO RECORDS; AMENDING THE ELECTRONIC AUTHENTICATION OF DOCUMENTS ACT TO CLARIFY THE PURPOSE AND CHANGE CERTAIN TECHNICAL DEFINITIONS.

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

Section 1. Section 14-15-2 NMSA 1978 (being Laws 1996, Chapter 11, Section 2) is amended to read:

"14-15-2. PURPOSE.--The purpose of the Electronic Authentication of Documents Act is to:

A. provide a centralized, public sector, electronic registry for authenticating electronic documents by means of a public and private key system;

B. promote electronic commerce by eliminating barriers resulting from uncertainties over signature requirements and promoting the development of the legal and business infrastructure necessary to implement secure electronic commerce;

C. facilitate electronic filing of documents with government agencies and promote efficient delivery of government services by means of reliable, secure electronic records and document transactions; and

D. establish a coherent approach to rules and standards regarding the authentication and integrity of electronic records that can serve as a model to be adopted by other states and help to promote uniformity among the various states."

Section 2. Section 14-15-3 NMSA 1978 (being Laws 1996, Chapter 11, Section 3) is amended to read:

"14-15-3. DEFINITIONS.--As used in the Electronic Authentication of Documents Act:

A. "archival listing" means entries in the register that show public keys that are no longer current;

B. "authenticate" means to ascertain the identity of the originator, verify the integrity of the electronic data and establish a link between the data and the originator;

C. "certificate" means a record that at a minimum:

(1) identifies the certification authority issuing it;

(2) names or otherwise identifies its subscriber or the device or electronic agent under the control of the subscriber;

(3) contains a public key under the control of the subscriber;

(4) specifies the public key's operational period; and

(5) is signed with a digital signature by the certification authority issuing it;

D. "digital signature" means a type of electronic signature created by transforming an electronic record using a message digest function and encrypting the resulting transformation with an asymmetric cryptosystem using the signer's private key so that any person having the initial untransformed electronic record, the encrypted transformation and the signer's corresponding public key can accurately determine whether the transformation was created using the private key that corresponds to the signer's public key and whether the initial electronic record has been altered since the transformation was made;

E. "document" means any identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. "Document" includes correspondence, agreements, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy formats;

F. "electronic authentication" means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of a public key and private key system;

G. "key pair" means, in a public and private key system, a private key and its corresponding public key that can verify an electronic authentication created by the private key;

H. "message digest function" means an algorithm that maps or translates the sequence of bits comprising an electronic record into another generally smaller set of bits, referred to as the message digest, without requiring the use of any secret information, such as a key, and with the result that an electronic record yields that same message digest every time the algorithm is executed using the electronic record as input and it is computationally unfeasible for two electronic records to be found or deliberately generated to produce the same message digest using the algorithm unless the two records are precisely identical;

I. "office" means the office of electronic documentation;

J. "originator" means the person who signs a document electronically;

K. "person" means any individual or entity, including:

(1) an estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; and

(2) any federal, state or local governmental unit or subdivision or any agency, department or instrumentality thereof;

L. "private key" means the code or alphanumeric sequence used to encode an electronic authentication that is known only to its owner and that is the part of a key pair used to create a digital signature;

M. "public key" means the code or alphanumeric sequence used to decode an electronic authentication and that is the part of a key pair used to verify a digital signature;

N. "public and private key system" means the hardware, software and firmware provided by a vendor for the following purposes:

(1) to generate public and private key pairs;

(2) to produce a record abstraction by means of a message digest function;

(3) to encode a signature block and a record abstraction or an entire document;

(4) to decode a signature block and a record abstraction or an entire document; and

(5) to verify the integrity of a document;

O. "register" means a system for storing and retrieving certificates or information relevant to certificates, including information relating to the status of a certificate;

P. "revocation" means the act of notifying the secretary that a public key has ceased or will cease to be effective after a specified time and date;

Q. "secretary" means the secretary of state; and

R. "signed" or "signature" means any symbol executed or adopted or any security procedure employed or adopted using electronic means or otherwise, by or on behalf of a person with the intent to authenticate a record."

SENATE BILL 146, AS AMENDED

CHAPTER 33

RELATING TO VOLUNTARY ENVIRONMENTAL REMEDIATION; CLARIFYING LENDER LIABILITY.

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

Chapter 33 Section 1

Section 1. Section 74-4G-10 NMSA 1978 (being Laws 1997, Chapter 38, Section 10) is amended to read:

"74-4G-10. LENDER LIABILITY.--A person who maintains indicia of ownership primarily to protect a security interest in a site that is the subject of a voluntary remediation agreement, who does not participate in the management of the site and is not in control

of or does not have responsibility for daily operation of the site shall not be considered an owner or operator of that site and shall not be liable under any contaminant control or other environmental protection law or regulation administered by the department or otherwise responsible to the department for any environmental contamination or response action costs associated with the site. This section shall apply to all indicia of ownership existing on and after July 1, 1997."

SENATE BILL 225, AS AMENDED

CHAPTER 34

RELATING TO INSURANCE; EXEMPTING CHARITABLE GIFT ANNUITIES FROM REGULATIONS APPLICABLE TO INSURANCE COMPANIES.

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

Chapter 34 Section 1

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

"CHARITABLE GIFT ANNUITIES--EXEMPT FROM REGULATION AS INSURANCE COMPANY.--

A. As used in this section:

(1) "charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes;

(2) "charitable organization" means an entity described in:

(a) Section 501(c)(3) of the Internal Revenue Code of 1986; or

(b) Section 170(c) of that act; and

(3) "qualified charitable gift annuity" means a charitable gift annuity described in Section 501(m)(5) and Section 514(c)(5) of that act that is issued by a charitable organization that on the date of the annuity agreement:

(a) has either an unrestricted fund balance consisting of assets in excess of liabilities of not less than three hundred thousand dollars ($300,000) or unencumbered assets in its gift annuity fund of not less than three hundred thousand dollars ($300,000); and

(b) has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

B. The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

C. A charitable gift annuity issued prior to July 1, 1999 is a qualified charitable gift annuity for purposes of this section, and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

D. When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor in writing in the annuity agreement that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the insurance division or protected by a guaranty association affiliated with the division. The disclosure shall be in a separate paragraph in a print size no smaller than that employed generally in the annuity agreement.

E. A charitable organization that issues qualified charitable gift annuities shall notify the insurance division in writing by the later of October 1, 1999 or the date on which it enters into the organization's first qualified charitable gift annuity agreement. The notice shall:

(1) be signed by an officer or director of the charitable organization;

(2) identify the charitable organization; and

(3) certify that the organization is a charitable organization and the annuities issued by the organization are qualified charitable gift annuities. The charitable organization shall not be required to provide additional information to the division except as provided in Subsection F of this section.

F. The failure of a charitable organization to comply with the notice requirements provided in Subsections D and E of this section does not prevent a charitable gift annuity that otherwise meets the requirements of this section from constituting a qualified charitable gift annuity; provided, however, that the superintendent may enforce performance of those requirements by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the notice requirements provided in Subsections D and E of this section.

G. The issuance of a qualified charitable gift annuity does not constitute a violation of the Unfair Practices Act."

Chapter 34 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 307

CHAPTER 35

RELATING TO TAXATION; EXTENDING THE PERIOD FOR APPLICATION OF CERTAIN PROVISIONS FOR APPORTIONMENT OF BUSINESS INCOME FOR CORPORATE INCOME TAX PURPOSES BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS MANUFACTURING.

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

Chapter 35 Section 1

Section 1. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1) is repealed and a new Section 7-4-10 NMSA 1978 is enacted to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three."

Chapter 35 Section 2

Section 2. REPEAL.--Laws 1993, Chapter 153, Section 2 is repealed.

Chapter 35 Section 3

Section 3. APPLICABILITY.--The provisions of Section 1 of this act apply to taxable years beginning on or after January 1, 2003.

Chapter 35 Section 4

Section 4. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 1 of this act is January 1, 2003.

B. The effective date of the provisions of Section 2 of this act is July 1, 1999.

HOUSE BILL 178

CHAPTER 36

RELATING TO TAXATION; EXTENDING THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF THE INVESTMENT CREDIT ACT RELATING TO THE VALUE OF QUALIFIED EQUIPMENT AND EMPLOYMENT REQUIREMENTS.

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

Chapter 36 Section 1

Section 1. Laws 1997, Chapter 62, Section 3 is amended to read:

Chapter 36 Section 3

"Section 3. Laws 1990, Chapter 3, Section 10, as amended by Laws 1992, Chapter 17, Section 1 and also by Laws 1992, Chapter 104, Section 1, is amended to read:

Chapter 36 Section 10

"Section 10. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1, 2, 4, 5, 7 and 9 of Laws 1990, Chapter 3 is January 1, 1991.

B. The effective date of the provisions of Sections 6 and 8 of Laws 1990, Chapter 3 is January 1, 2004.""

HOUSE BILL 262

CHAPTER 37

RELATING TO HEALTH; CHANGING CERTAIN DEFINITIONS AND REPORTING REQUIREMENTS IN THE INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT.

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

Chapter 37 Section 1

Section 1. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended) is amended to read:

"27-5-4. DEFINITIONS.--As used in the Indigent Hospital and County Health Care Act:

A. "ambulance provider" or "ambulance service" means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and

charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

B. "board" means a county indigent hospital and county health care board;

C. "indigent patient" means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

D. "hospital" means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

(1) for-profit hospitals;

(2) state-owned hospitals; or

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

E. "cost" means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

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

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

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

I. "department" means the human services department;

J. "sole community provider hospital" means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements pursuant to the Drug Abuse Act;

L. "alcohol rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

M. "mental health center" means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health pursuant to the Community Mental Health Services Act;

N. "health care provider" means:

(1) a nursing home;

(2) an in-state home health agency;

(3) an in-state licensed hospice;

(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

(6) a drug rehabilitation center;

(7) an alcohol rehabilitation center;

(8) a mental health center; or

(9) services provided in a hospital or outpatient setting by a licensed medical doctor, osteopathic physician, dentist, optometrist or expanded practice nurse that are necessary for such conditions that endanger the life of or threaten permanent disability to an indigent patient;

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

P. "planning" means the development of a countywide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and which demonstrates coordination between the county and state and local health planning efforts; and

Q. "commission" means the New Mexico health policy commission."

Chapter 37 Section 2

Section 2. Section 27-5-5.1 NMSA 1978 (being Laws 1993, Chapter 321, Section 17) is amended to read:

"27-5-5.1. INDIGENT HEALTH CARE REPORT--REQUIRED.--Every county in New Mexico shall file an annual report on all indigent health care funding by the county with the commission. The report shall contain the county's eligibility criteria for indigent patients, services provided to indigent patients, restrictions on services provided to indigent patients, conditions for reimbursement to providers of health care, revenue sources used to pay for indigent health care and other related information as determined by the commission. The report shall be submitted by October 1 of each year on a form provided by the commission. The commission shall make the report available to interested parties."

Chapter 37 Section 3

Section 3. Section 27-5-6 NMSA 1978 (being Laws 1965, Chapter 234, Section 6, as amended) is amended to read:

"27-5-6. POWERS AND DUTIES OF THE BOARD.--The board:

A. shall administer claims pursuant to the provisions of the Indigent Hospital and County Health Care Act;

B. shall prepare and submit a budget to the board of county commissioners for the amount needed to defray claims made upon the fund and to pay costs of administration

of the Indigent Hospital and County Health Care Act and costs of development of a countywide or multicounty health plan. The combined costs of administration and planning shall in no event exceed the following percentages of revenues based on the previous fiscal year revenues for a fund that has existed for at least one fiscal year or based on projected revenues for the year being budgeted for a fund that has existed for less than one fiscal year. The percentage of the revenues in the fund that may be used for such combined administrative and planning costs is equal to the sum of the following:

(1) ten percent of the amount of the revenues in the fund not over five hundred thousand dollars ($500,000);

(2) eight percent of the amount of the revenues in the fund over five hundred thousand dollars ($500,000) but not over one million dollars ($1,000,000); and

(3) four and one-half percent of the amount of the revenues in the fund over one million dollars ($1,000,000);

C. shall make rules and regulations necessary to carry out the provisions of the Indigent Hospital and County Health Care Act; provided that the standards for eligibility and allowable costs for county indigent patients shall be no more restrictive than the standards for eligibility and allowable costs prior to December 31, 1992;

D. shall set criteria and cost limitations for medical care in licensed out-of-state hospitals, ambulance services or health care providers;

E. shall cooperate with appropriate state agencies to use available funds efficiently and to make health care more available;

F. shall cooperate with the department in making any investigation to determine the validity of claims made upon the fund for any indigent patient;

G. may accept contributions or other county revenues, which shall be deposited in the fund;

H. may hire personnel to carry out the provisions of the Indigent Hospital and County Health Care Act;

I. shall review all claims presented by a hospital, ambulance service or health care provider to determine compliance with the rules and regulations adopted by the board or with the provisions of the Indigent Hospital and County Health Care Act, determine whether the patient for whom the claim is made is an indigent patient and determine the allowable medical, ambulance service or health care services costs; provided that the burden of proof of any claim shall be upon the hospital, ambulance service or health care provider;

J. shall state in writing the reason for rejecting or disapproving any claim and shall notify the submitting hospital, ambulance service or health care provider of the decision within sixty days after eligibility for claim payment has been determined;

K. shall pay all claims that are not matched with federal funds under the state medicaid program and that have been approved by the board from the fund and shall make payment within thirty days after approval of a claim by the board;

L. shall determine by county ordinance the types of health care providers that will be eligible to submit claims under the Indigent Hospital and County Health Care Act;

M. shall review, verify and approve all medicaid sole community provider hospital payment requests in accordance with rules and regulations adopted by the board prior to their submittal by the hospital to the department for payment but no later than January 1 of each year;

N. shall transfer to the state treasurer by the last day of March, June, September and December of each year an amount equal to one-fourth of the county's payment for support of sole community provider payments as calculated by the department for that county for the current fiscal year. This money shall be deposited in the sole community provider fund;

O. may provide for the transfer of money from the county indigent hospital claims fund to the county-supported medicaid fund to meet the requirements of the Statewide Health Care Act; and

P. may contract with ambulance providers, hospitals or health care providers for the provision of health care services."

HOUSE BILL 270, AS AMENDED

CHAPTER 38

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT TO EXTEND THE DEADLINE FOR ADOPTION OF MUNICIPAL GENERAL MEMBER COVERAGE PLAN 4.

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

Chapter 38 Section 1

Section 1. Section 10-11-55.7 NMSA 1978 (being Laws 1998, Chapter 106, Section 1) is amended to read:

"10-11-55.7. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 4--APPLICABILITY.--Municipal general member coverage plan 4 is applicable to a

designated group of municipal general members the first day of the calendar month following an affirmative vote by the majority of the municipal general members in a designated group. A designated group may be all members employed by the affiliated public employer, an organizational group whose compensation is established by negotiated contract or all members employed by the affiliated public employer, whose compensation is not established by negotiated contract. The election shall be conducted by the retirement board in accordance with the procedures adopted by the retirement board. The procedures shall afford all municipal general members who are part of the designated group an opportunity to vote. A new election for coverage by municipal general member coverage plan 4 shall not be held prior to the expiration of six months following the date of an election that failed to adopt municipal general member coverage plan 4. An election adopting municipal general member coverage plan 4 is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employer or employee contributions with respect to all current and future municipal general employees of the affiliated public employer who are part of the designated group. All elections for the purpose of adopting municipal general member coverage plan 4 shall take place prior to July 1, 2000. Any election occurring after June 30, 2000 shall be void."

HOUSE BILL 635

CHAPTER 39

RELATING TO STATE PARKS; AMENDING A SECTION OF THE NMSA 1978 TO AUTHORIZE THE STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT TO REGULATE CONSTRUCTION OF BOAT DOCKS AT STATE PARKS.

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

Chapter 39 Section 1

Section 1. Section 16-2-7 NMSA 1978 (being Laws 1935, Chapter 57, Section 7, as amended) is amended to read:

"16-2-7. RULES AND REGULATIONS.--The secretary shall promulgate and adopt rules for each park as circumstances may demand to the end that each state park may be made as nearly self-supporting as possible. The secretary shall also adopt rules to regulate the construction and maintenance of boat docks for a lake that is a part of a state park."

SENATE BILL 514

CHAPTER 40

RELATING TO WATER; EXTENDING THE TERM OF A LEASE; PROVIDING A FORTY-YEAR WATER USE PLANNING PERIOD TO A WATER USE LEASED BY MUNICIPALITIES, COUNTIES, STATE UNIVERSITIES, MEMBER-OWNED COMMUNITY WATER SYSTEMS AND PUBLIC UTILITIES.

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

Chapter 40 Section 1

Section 1. Section 72-6-3 NMSA 1978 (being Laws 1967, Chapter 100, Section 3) is amended to read:

"72-6-3. OWNER MAY LEASE USE OF WATER.--

A. Any owner may lease to any person all or any part of the water use due him under his water right, and the owner's water right shall not be affected by the lease of the use. The use to which the owner is entitled under his right shall, during the exercise of the lease, be reduced by the amount of water so leased. Upon termination of the lease, the water use and location of use subject to the lease shall revert to the owner's original use and location of use.

B. The lease may be effective for immediate use of water or may be effective for future use of the water covered by the lease; however, the lease shall not be effective to cumulate water from year to year or to substantially enlarge the use of the water in such manner that it would injure other water users. The lease shall not toll any forfeiture of water rights for nonuse, and the owner shall not, by reason of the lease, escape the forfeiture for nonuse prescribed by law; provided, however, that the state engineer shall notify both the owner and the lessee of declaration of nonuser as provided in Sections 72-5-28 and 72-12-8 NMSA 1978. The initial or any renewal term of a lease of water use shall not exceed ten years.

C. A water use may be leased for forty years by municipalities, counties, state universities, public utilities supplying water to municipalities or counties and member-owned community water systems as lessee and shall be entitled to the protection of the forty-year water use planning period as provided in Section 72-1-9 NMSA 1978. A water use deriving from an acequia or community ditch organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978, whether owned by a water right owner under the acequia or community ditch or by the acequia or community ditch may be leased for a term not to exceed ten years."

Chapter 40 Section 2

Section 2. Section 72-6-5 NMSA 1978 (being Laws 1967, Chapter 100, Section 5) is amended to read:

"72-6-5. APPROVAL.--The state engineer shall approve the application if the applicant has reasonably shown that his proposed use and location of use is a beneficial use and:

A. will not impair any existing right to a greater degree than such right is, or would be, impaired by the continued use and location of use by the owner; and

B. will not be contrary to the conservation of water within the state or detrimental to the public welfare of the state."

Chapter 40 Section 3

Section 3. Section 72-1-9 NMSA 1978 (being Laws 1985, Chapter 198, Section 1, as amended by Laws 1990, Chapter 11, Section 1 and also by Laws 1990, Chapter 40, Section 1) is amended to read:

"72-1-9. MUNICIPAL, COUNTY, MEMBER-OWNED COMMUNITY WATER SYSTEMS AND STATE UNIVERSITY WATER DEVELOPMENT PLANS--PRESERVATION OF MUNICIPAL, COUNTY AND STATE UNIVERSITY WATER SUPPLIES.--

A. It is recognized by the state of New Mexico that it promotes the public welfare and the conservation of water within the state for municipalities, counties, state universities, member-owned community water systems and public utilities supplying water to municipalities or counties to plan for the reasonable development and use of water resources. The state further recognizes the state engineer's administrative policy of not allowing municipalities, member- owned community water systems, counties and state universities to acquire and hold, unused, water rights in an amount greater than their reasonable needs within forty years.

B. Municipalities, counties, state universities, member-owned community water systems and public utilities supplying water to municipalities or counties shall be allowed a water use planning period not to exceed forty years, and water rights for municipalities, counties, state universities, member-owned community water systems and public utilities supplying water to such municipalities or counties shall be based upon a water development plan the implementation of which shall not exceed a forty-year period from the date of the application for an appropriation or a change of place or purpose of use pursuant to a water development plan or for preservation of a municipal, county, member-owned community water system or state university water supply for reasonably projected additional needs within forty years."

HOUSE AGRICULTURAL AND WATER RESOUCES

COMMITTEE SUBSTITUTE FOR HOUSE BILL 29, AS AMENDED

CHAPTER 41

RELATING TO FINANCING; CHANGING CERTAIN PROVISIONS OF THE LOW-INCOME HOUSING TRUST ACT AND THE LAND TITLE TRUST FUND ACT TO CLARIFY EXISTING LAW AND PROVIDE FOR MORE EFFECTIVE USE OF THE FUNDS GENERATED.

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

Chapter 41 Section 1

Section 1. Section 58-18B-3 NMSA 1978 (being Laws 1994, Chapter 146, Section 3, as amended) is amended to read:

"58-18B-3. DEFINITIONS.--As used in the Low-Income Housing Trust Act:

A. "appropriate financial institution service charges and fees" means those service charges and fees that a financial institution charges its customers on demand deposit accounts;

B. "division" means the financial institutions division of the regulation and licensing department;

C. "escrow closing agent" means an escrow agent other than a title company that acts in the normal course of business as the agent of the seller and buyer of real estate for the purpose of consummating a sale, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, realtors' commissions, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

D. "escrow servicing agent" means any person who in the normal course of business collects and disburses funds received from real estate-related financing instruments on behalf of a lender or borrower;

E. "first-time home buyer" means:

(1) an individual or the individual's spouse who has not owned a home other than a manufactured home during the three-year period prior to the purchase of a home; or

(2) any individual who is a displaced homemaker or a single parent;

F. "fund" means the land title trust fund created pursuant to the provisions of the Land Title Trust Fund Act;

G. "low-income persons" means a household consisting of a single individual or a family or unrelated individuals living together when the household's total annual income does not exceed eighty percent of the median income for the area, as determined by the United States department of housing and urban development and as adjusted for family size, or other income ceiling determined for the area on the basis of that department's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents or unusually high or low family incomes;

H. "person" means an individual or any other legal entity; and

I. "property manager" means a person who acts in the normal course of business as the agent for the owner of real property for the purpose of property rental, leasing and management."

Chapter 41 Section 2

Section 2. Section 58-18B-5 NMSA 1978 (being Laws 1994, Chapter 146, Section 10) is amended to read:

"58-18B-5. TRUST ACCOUNTS--ESCROW ACCOUNTS--SPECIAL ACCOUNTS--POOLED INTEREST-BEARING ACCOUNTS--DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

A. Every real estate broker who maintains a trust or escrow account as required pursuant to the provisions of Subsection H of Section 61-29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may deposit all customer funds into that account except for:

(1) funds required to be deposited into a property management trust account under an express property management agreement; or

(2) funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

B. Every escrow closing agent that maintains a trust account or escrow account pursuant to the provisions of Section 58-22-20 NMSA 1978 shall maintain a pooled interest-bearing escrow account and shall deposit all customer funds into that account,

except for funds required to be deposited into an interest-bearing account under an express agreement between the parties to a transaction and under which agreement provisions are made for the payment of interest to be earned on the funds deposited.

C. The interest earned on customer funds deposited in a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section, net of any appropriate financial institution service charges and fees, shall be remitted monthly or quarterly from the financial institution in which the account is maintained to the fund. The account agreement between the depositor and the financial institution shall expressly provide for the required remittance of interest.

D. The provisions of this section do not relieve a real estate broker or escrow closing agent from any obligations under other laws to safeguard and account for funds in a pooled interest-bearing account.

E. The pooled interest-bearing escrow accounts authorized to be established pursuant to the provisions of this section shall be interest-bearing demand accounts from which withdrawals and transfers can be made without delay, subject only to any notice period the depository institution is required to observe by law or regulation.

F. The director of the division shall adopt rules to carry out the provisions of the Low-Income Housing Trust Act.

G. A person establishing and maintaining a pooled interest-bearing escrow account required by the provisions of Subsection A or B of this section is not required to make disclosure to a person whose funds are placed in the account of the disposition of interest earned on the account.

H. An escrow servicing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

I. A property manager shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section.

J. Real estate brokers and escrow closing agents shall enroll and instruct participating financial institutions on how to establish a pooled interest-bearing escrow account and how to authorize remittance of accrued interest less service charges to the fund.

K. A real estate broker or an escrow closing agent shall not be required to establish and maintain a pooled interest-bearing escrow account pursuant to the provisions of Subsection A or B of this section if no financial institution in the community where the broker or agent maintains his principal place of business provides or offers that type of account."

Chapter 41 Section 3

Section 3. Section 58-18B-6 NMSA 1978 (being Laws 1994, Chapter 146, Section 11) is amended to read:

"58-18B-6. POOLED INTEREST-BEARING ESCROW ACCOUNTS AUTHORIZED TO BE MADE AVAILABLE--COMPUTATION OF INTEREST--REPORTS.--

A. Any depository institution regulated by the division that maintains trust or escrow accounts for customers may establish and make available pooled interest-bearing accounts. Interest on a pooled interest-bearing account shall be computed on the daily collected balance of the account or as otherwise computed in accordance with the institution's standard accounting practices.

B. Any depository institution participating in the program and making a remittance of interest to the fund pursuant to the provisions of Section 58-18B-5 NMSA 1978 shall, at the time of remittance, transmit a report to the trustee showing:

(1) the name of the account holder for whom the remittance is sent;

(2) the rate of interest used to compute the earned interest;

(3) the amount, if any, of appropriate financial institution service charges and fees deducted; and

(4) the account balance as of the ending date of the reporting period.

C. Remittances to the fund shall be made at least quarterly, no later than the tenth day of the month.

D. A copy of the report required to be made pursuant to the provisions of Subsection B of this section shall be sent to the person in whose name the account is maintained."

Chapter 41 Section 4

Section 4. Section 58-18B-7 NMSA 1978 (being Laws 1994, Chapter 146, Section 12) is amended to read:

"58-18B-7. USE OF MONEY FROM FUND.--Money from the fund and other sources shall be used in accordance with the provisions of the Land Title Trust Fund Act."

Chapter 41 Section 5

Section 5. Section 58-28-3 NMSA 1978 (being Laws 1997, Chapter 118, Section 3) is amended to read:

"58-28-3. LAND TITLE TRUST FUND CREATED.--The "land title trust fund" is created. The New Mexico mortgage finance authority shall be the trustee for the fund. The

trustee shall deposit in the fund money received by it pursuant to the Low-Income Housing Trust Act."

Chapter 41 Section 6

Section 6. Section 58-28-4 NMSA 1978 (being Laws 1997, Chapter 118, Section 4) is amended to read:

"58-28-4. TRUST ACCOUNTS--ESCROW ACCOUNTS--POOLED INTEREST-BEARING TRANSACTION ACCOUNTS--DISPOSITION OF EARNED INTEREST ON CERTAIN ACCOUNTS.--

A. A title company that maintains one or more trust accounts or escrow accounts into which customer funds are deposited for use in the purchase, sale or financing of real property located in New Mexico may maintain one or more pooled interest-bearing transaction accounts and may deposit customer funds into those accounts, except for funds required to be deposited into interest-bearing accounts or investments under instructions from one or more of the parties to a transaction that provide for the payment of interest to be earned on the deposited funds to a person other than the title company. A pooled interest-bearing transaction account established pursuant to the provisions of this section shall be maintained in the name of the title company, but the trustee shall be named and shown as the beneficial owner of the account income or interest. A title company maintaining one or more pooled interest-bearing transaction accounts shall not be paid or receive any interest earned on funds deposited in the accounts except for the purpose of remitting net earned interest to the trustee pursuant to the provisions of this section.

B. The interest earned on customer funds deposited in a pooled interest-bearing transaction account pursuant to the requirements of Subsection A of this section, net of any service charges and fees that a depository institution charges to regular, non-title company depositors and net of any reasonable charge for preparation and transmittal of any required report pursuant to the provisions of Subsection F of this section, shall be remitted monthly or quarterly either directly to the fund or to the title company for its remittance to the fund. Alternatively, the depository institution may credit the title company account with the net interest earned either monthly or quarterly. Interest accrued after deducting the allowable charges and fees shall be treated as interest earned by the trustee and reported as such by the depository institution.

C. The provisions of this section shall not change existing duties or obligations of a title company under other laws to safeguard and account for funds held for customers.

D. Funds in each pooled interest-bearing transaction account shall be subject to withdrawal upon request and without delay, subject only to the notice period the depository institution is required to observe by law or regulation.

E. The rate of interest payable on a pooled interest-bearing transaction account shall not be less than the rate customarily paid by the depository institution to regular, non-title company depositors for similar accounts. Interest shall be computed in accordance with the depository institution's standard accounting practice. Higher rates offered by the depository institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by the title company on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal, subject only to the notice period the depository institution is required to observe by law or regulation.

F. A depository institution or title company making a remittance of interest to the fund shall at the time of the remittance transmit a report to the trustee for each account from which remittance is made showing:

(1) the name of the title company maintaining the account from which remittance is made;

(2) the rate of interest used to compute the earned interest and the amount of earned interest;

(3) the amount, if any, of depository institution service charges and fees deducted and any charge for the preparation and transmittal of the report; and

(4) the account balance as of the ending date of the reporting period.

G. If the depository institution remits to the title company or credits the title company account, it shall make the remittance or credit no later than ten days after the statement cutoff for that account. The title company shall remit to the fund and shall send the report with the remittance no later than thirty days after receipt of the remittance or credit by the depository institution.

H. Remittances to the fund shall be made at least quarterly, no later than ten days after the statement cutoff for that account if made by the depository institution and no later than thirty days after receipt of remittance or credit from the depository institution if made by the title company.

I. The division shall adopt and promulgate rules and regulations regarding the obligations of depository institutions pursuant to the provisions of the Land Title Trust Fund Act and the Low-Income Housing Trust Act."

Chapter 41 Section 7

Section 7. TEMPORARY PROVISION--TRANSFER OF FUNDS--APPROPRIATION.--On July 1, 1999, the balance in the low-income housing trust fund shall be transferred and deposited in the land title trust fund.

Chapter 41 Section 8

Section 8. REPEAL.--Sections 58-18B-4, 58-18B-8,

58-18B-9 and 58-18B-11 NMSA 1978 (being Laws 1994, Chapter 146, Sections 9, 13, 14 and 16) are repealed.

Chapter 41 Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 94

CHAPTER 42

RELATING TO SPECIAL DISTRICTS; PROVIDING NOTICE TO THE NEW MEXICO FINANCE AUTHORITY OF AN EXTENSION OF A DISTRICT ASSESSMENT; DECLARING AN EMERGENCY.

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

Chapter 42 Section 1

Section 1. Section 73-20-46 NMSA 1978 (being Laws 1965, Chapter 137, Section 20, as amended by Laws 1989, Chapter 21, Section 1 and also by Laws 1989, Chapter 273, Section 1) is amended to read:

"73-20-46. DISTRICT ASSESSMENTS.--

A. In the event a district is unable to meet or bear the expense of the duties imposed upon it by the Soil and Water Conservation District Act, the supervisors may adopt a resolution which, to be effective, shall be approved by referendum in the district and which shall provide for an annual levy for a stated period of up to ten years in a stated amount not exceeding one dollar ($1.00), or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by this section, on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, of real property within the district, except that real property within incorporated cities and towns in the district may be excluded. The referendum held to approve or reject the resolution of the supervisors shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district. After the initial authorization is approved by referendum, the supervisors shall adopt a resolution in each following year authorizing the levy. To extend an assessment beyond the period of time originally authorized and approved by referendum, the supervisors

shall adopt a new resolution and the district voters shall approve it in a referendum. The extension shall be for the same period of time as originally approved, but the rate of the tax may be different as long as it does not exceed one dollar ($1.00) on each one thousand dollars ($1,000) of net taxable value of real property within the district, except that real property within incorporated municipalities in the district may be excluded. If the district is indebted to the United States or the state or any of their respective agencies or instrumentalities, including the New Mexico finance authority, at the time of the expiration of the original authorization, the supervisors may renew the assessment by resolution for a period not to exceed the maturity date of the indebtedness, and no referendum for that renewal is necessary.

B. No resolution authorized under Subsection A of this section shall be effective, and neither a referendum nor a levy is authorized, unless the resolution is submitted to and approved in writing by the commission.

C. In the event a resolution of the supervisors is adopted and approved in accordance with the provisions of Subsection A of this section, the supervisors of the district shall certify by the fifteenth of July of each year to the county assessor of each county in which there is situate land subject to the district assessment:

(1) a copy of the resolution of the district supervisors;

(2) the results of any referendum held in the year the certification is made; and

(3) a list of landowners of the district and a description of the land owned by each which is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, shall compute the assessment and shall present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same time that county ad valorem taxes are levied. The conditions, penalties and rates of interest applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District assessment funds shall be transferred to and held by the district supervisors and shall be expended for district obligations and functions. All district funds shall be expended in accordance with budgets approved by the commission and by the local government division of the department of finance and administration.

G. In the event the supervisors of a district determine that there are or will be sufficient funds available for the operation of the district for any year for which an assessment is to be levied, they shall, by resolution, direct the assessor of each county in which

taxable district land is situate, by July 15 of each year, to decrease the district assessment or to delete the district assessment reflected on the tax schedules.

H. Any levy authorized by the Soil and Water Conservation District Act and any loan or other indebtedness authorized by that act which will require a levy shall be based exclusively on or levied exclusively on the real property in the district, except that real property within incorporated cities and towns may be excluded. Owners of nonagricultural land may petition the district board of supervisors to delete their real property from the tax schedules, insofar as the district assessment is concerned; provided that these lands will not benefit from the operation of the district or the project for which the loan or levy is to be made."

Chapter 42 Section 2

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

HOUSE BILL 96

CHAPTER 43

RELATING TO FEDERAL MINERAL LEASING REVENUES; PROVIDING THAT CERTAIN EXCESS REVENUES BE DISTRIBUTED TO THE COMMON SCHOOL PERMANENT FUND; MAKING AN APPROPRIATION.

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

Chapter 43 Section 1

Section 1. Section 22-8-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 90, as amended) is amended to read:

"22-8-34. FEDERAL MINERAL LEASING FUNDS.--

A. Except for an annual appropriation to the instructional material fund and to the bureau of mines and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other money received by the state pursuant to the provisions of the federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed to the public school fund.

B. All money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b) shall be distributed as follows:

(1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the

same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and

(2) the remainder shall be distributed to the common school permanent fund."

HOUSE BILL 131

CHAPTER 44

RELATING TO PUBLIC EMPLOYEES; CHANGING GROUP INSURANCE PROVISIONS FOR POLITICAL SUBDIVISIONS WITH TWENTY-FIVE EMPLOYEES OR FEWER.

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

Chapter 44 Section 1

Section 1. Section 10-7-4 NMSA 1978 (being Laws 1941, Chapter 188, Section 1, as amended) is amended to read:

"10-7-4. GROUP INSURANCE--CAFETERIA PLAN--CONTRIBUTIONS FROM PUBLIC FUNDS.--

A. All state departments and institutions and all political subdivisions of the state, excluding municipalities, counties and political subdivisions of the state with twenty-five employees or fewer, shall cooperate in providing group term life, medical or disability income insurance for the benefit of eligible employees or salaried officers of the respective departments, institutions and subdivisions.

B. The group insurance contributions of the state or any of its departments or institutions, including institutions of higher education and the public schools, shall be made as follows:

(1) seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars ($15,000);

(2) seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars ($15,000) or more but less than twenty thousand dollars ($20,000);

(3) sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars ($20,000) or more but less than twenty-five thousand dollars ($25,000); or

(4) sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars ($25,000) or more.

As used in this subsection, "cost of the insurance" means the premium required to be paid to provide coverages. Any contributions of the political subdivisions of the state, except the public schools and political subdivisions of the state with twenty-five employees or fewer, shall not exceed sixty percent of the cost of the insurance.

C. When a public employee elects to participate in a cafeteria plan as authorized by the Cafeteria Plan Act and enters into a salary reduction agreement with the governmental employer, the provision of Subsection B of this section with respect to the maximum contributions that can be made by the employer are not violated and will still apply. The employer percentage or dollar contributions as provided in Subsection B of this section shall be determined by the employee's gross salary prior to any salary reduction agreement.

D. 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 responsible public body that administers a plan offered pursuant to this section shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection."

Chapter 44 Section 2

Section 2. Section 10-7-4.2 NMSA 1978 (being Laws 1991, Chapter 191, Section 1, as amended) is amended to read:

"10-7-4.2. GROUP INSURANCE--COUNTIES AND MUNICIPALITIES--CONTRIBUTIONS--DEFINITION--EXEMPTION FROM STATE PLAN.--

A. All municipalities, counties and political subdivisions with twenty-five employees or fewer shall cooperate in providing group term life, medical or disability income insurance for the benefit of eligible employees or salaried officers of the respective departments, institutions and subdivisions.

B. Municipalities, counties and political subdivisions with twenty-five employees or fewer may contribute any amount up to one hundred percent of the cost of the insurance. As used in this section, "cost of the insurance" means the premium required to be paid to provide coverages.

C. When a public employee elects to participate in a cafeteria plan as authorized by the Cafeteria Plan Act and enters into a salary reduction agreement with a municipal or county employer, the provisions of Subsection B of this section with respect to the maximum contributions that can be made by the employer are not violated and will still apply. The employer contributions as provided in Subsection B of this section shall be determined by the employee's gross salary prior to any salary reduction agreement.

D. 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

responsible public body that administers a plan offered pursuant to this section shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection.

E. Exempt from the provisions of Section 10-7-4 NMSA 1978 are all municipalities, counties and political subdivisions with twenty-five employees or fewer."

Chapter 44 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 306

CHAPTER 45

RELATING TO HORSE RACING; PROVIDING FOR THE BROADCAST OF SIMULCASTING OF RACES TO OTHER LICENSED LOCATIONS; DECLARING AN EMERGENCY.

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

Chapter 45 Section 1

Section 1. Section 60-1-25 NMSA 1978 (being Laws 1991, Chapter 195, Section 6) is amended to read:

"60-1-25. SIMULCASTING.--

A. As used in this section, "simulcasting" means a live audio-visual broadcast of an actual horse race at the time it is run.

B. The state racing commission may permit simulcasting of races being run at licensed New Mexico racetracks to racetracks or other locations holding a pari-mutuel or gaming license outside the state, as well as to other licensed New Mexico racetracks, and of races being run at racetracks outside New Mexico to licensed racetracks in this state. Pari-mutuel wagering on simulcasted races shall be prohibited except at licensed New Mexico racetracks on days that such racetracks have race meets in progress or on days that such racetracks do not have race meets in progress but are simulcasting races from another licensed New Mexico racetrack; provided, however, that pari-mutuel wagering on simulcasted races shall only be allowed at any licensed New Mexico racetrack within a radius of eighty miles of any other licensed New Mexico racetrack with race meets in progress if there is mutual agreement of the two licensees; and provided further that no licensed New Mexico racetrack shall be allowed to receive broadcasts of simulcast races unless that racetrack offers at least seventeen days per

year of pari-mutuel wagering on on-track live horse races. The commission shall promulgate rules concerning the simulcasting of racing as provided in this section.

C. All simulcasting of races shall have prior approval of the state racing commission."

Chapter 45 Section 2

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

HOUSE BILL 83

CHAPTER 46

RELATING TO CHILDREN; CLARIFYING THAT INDIAN CHILDREN HAVE THE SAME RIGHT TO SERVICES THAT ARE AVAILABLE TO OTHER CHILDREN IN THE STATE; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 46 Section 1

Section 1. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT JURISDICTION.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child;

(2) a child of a family in need of services;

(3) a neglected child;

(4) an abused child;

(5) a child subject to adoption; or

(6) a child subject to placement for a developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction to emancipate a minor.

C. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Child Custody Jurisdiction Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings.

D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the federal Indian Child Welfare Act of 1978.

E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child."

Chapter 46 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 232

CHAPTER 47

RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE INCOME TAX ACT TO CORRECT ERRORS, PROVIDE AN EXCEPTION FROM ESTIMATED TAX PAYMENTS FOR FIRST-YEAR FILERS AND PROVIDE CONDITIONS BY WHICH OPTIONAL REFUND CONTRIBUTION PROVISIONS WOULD BE REPEALED; AMENDING THE CORPORATE INCOME AND FRANCHISE TAX ACT TO REMOVE A SUPERFLUOUS DEFINITION; AMENDING THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT TO CHANGE A DEFINITION; AMENDING THE ESTATE TAX ACT TO CLARIFY APPLICATION OF A PROVISION; AMENDING THE TAX REFUND INTERCEPT PROGRAM ACT TO REPEAL AN OBSOLETE PROVISION; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Chapter 47 Section 1

Section 1. Section 7-2-7 NMSA 1978 (being Laws 1994, Chapter 5, Section 20, as amended) is amended to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, 1998:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over $4,000	1.7% of taxable income
0	$68.00 plus 3.2% of excess over $4,000
00	$196 plus 4.7% of excess over $8,000
000	$384 plus 6.0% of excess over $12,000
000	$864 plus 7.1% of excess over $20,000
000	$1,716 plus 7.9% of excess over $32,000
	$3,138 plus 8.2% of excess over $50,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
	1.7% of taxable income
	$136 plus 3.2% of excess over $8,000
000	$392 plus 4.7% of excess over $16,000
000	$768 plus 6.0% of excess over $24,000
000	$1,728 plus 7.1% of excess over $40,000
,000	$3,432 plus 7.9% of excess over $64,000
	$6,276 plus 8.2% of excess over $100,000.

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
	1.7% of taxable income
00	$93.50 plus 3.2% of excess over $5,500
000	$269.50 plus 4.7% of excess over $11,000
000	$504.50 plus 6.0% of excess over $16,000
000	$1,104.50 plus 7.1% of excess over $26,000
000	$2,240.50 plus 7.9% of excess over $42,000
	$4,057.50 plus 8.2% of excess over $65,000.

D. For heads of household filing returns:

If the taxable income is:	The tax shall be:
	1.7% of taxable income
	$119 plus 3.2% of excess over $7,000
	$343 plus 4.7% of excess over $14,000
	$625 plus 6.0% of excess over $20,000
	$1,405 plus 7.1% of excess over $33,000
	$2,825 plus 7.9% of excess over $53,000
	$5,195 plus 8.2% of excess over $83,000.

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."

Chapter 47 Section 2

Section 2. 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, every 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 credits provided by Sections 7-2-13 and 7-2-18.1 through 7-2-18.4 NMSA 1978 and for any applicable tax 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, he 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, seventy-five percent of the required annual payment must be paid 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, one hundred percent of the required annual payment must be paid 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 his gross income for the taxable year from ranching or farming, or who has received at least two-thirds of his 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.

No penalty under Subsection G of this section shall be imposed unless the rancher or farmer underpays his tax by more than one-third. If a joint return is filed, a rancher or farmer must consider his or her 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 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 which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to wage withholding and any other amounts withheld under the Withholding Tax Act.

G. Except as otherwise provided in this section, in the case of any underpayment of the required annual payment by a taxpayer, there shall be added to the tax an amount as 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 five hundred dollars ($500):

(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 for that taxpayer for that taxable year;

(2) the individual's preceding taxable year was a taxable year of twelve months, the individual did not have any tax liability for the preceding taxable year and the individual was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the individual 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 no penalty under Subsection G of this section shall be imposed with respect to any underpayment of the fourth required installment for the taxable year.

J. This section shall be applied 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. With respect to any taxable year ending 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 47 Section 3

Section 3. Section 7-2-18 NMSA 1978 (being Laws 1977, Chapter 196, Section 1, as amended) is amended to read:

"7-2-18. TAX REBATE OF PROPERTY TAX DUE THAT EXCEEDS THE ELDERLY TAXPAYER'S MAXIMUM PROPERTY TAX LIABILITY--REFUND.--

A. Any resident who has attained the age of sixty-five and files an individual New Mexico income tax return and is not a dependent of another individual may claim a tax rebate for the taxable year for which the return is filed. The tax rebate shall be the amount of property tax due on the resident's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

B. Any resident otherwise qualified under this section who rents a principal place of residence from another person may calculate the amount of property tax due by multiplying the gross rent for the taxable year by six percent. The tax rebate shall be the amount of property tax due on the taxpayer's principal place of residence for the taxable year that exceeds the property tax liability indicated by the table in Subsection F or G, as appropriate, of this section, based upon the taxpayer's modified gross income.

C. As used in this section, "principal place of residence" means the resident's dwelling, whether owned or rented, and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multi-dwelling or a multi-purpose building and a part of the land upon which it is built.

D. No claim for the tax rebate provided in this section shall be allowed a resident who was an inmate of a public institution for more than six months during the taxable year or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

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 tax rebate that would have been allowed on a joint return.

F. For taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property

tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
Over	But Not Over	
$ 0	$1,000	$20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150
15,000	16,000	180.

G. For taxpayers whose principal place of residence is in a county that has in effect for the taxable year a resolution in accordance with Subsection J of this section, the tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year that exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
Over	But Not Over	
$ 0	$ 1,000	$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135

14,000	15,000	150
15,000	16,000	165
16,000	17,000	180
17,000	18,000	195
18,000	19,000	210
19,000	20,000	225
20,000	21,000	240
21,000	22,000	255
22,000	23,000	270
23,000	24,000	285
24,000	25,000	300.

H. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the appropriate table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately that could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000) for taxpayers whose principal place of residence is in a county that does not have in effect for the taxable year a resolution in accordance with Subsection J of this section and twenty-five thousand dollars ($25,000) for all other taxpayers.

I. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

J. The board of county commissioners may adopt a resolution authorizing otherwise qualified taxpayers whose principal place of residence is in the county to claim the rebate provided by this section in the amounts set forth in Subsection G of this section. The resolution must also provide that the county will reimburse the state for the additional amount of tax rebates paid to such taxpayers over the amount that would have been paid to such taxpayers under Subsection F of this section. The resolution may apply to one or more taxable years. The county must adopt the resolution and notify the department of the adoption by no later than September 1 of the taxable year to which the resolution first applies. The department shall determine the additional amounts paid to taxpayers of the county for each taxable year and shall bill the county

for the amount at the time and in the manner determined by the department. If the county fails to pay any bill within thirty days, the department may deduct the amount due from any amount to be transferred or distributed to the county by the state, other than debt interceptions."

Chapter 47 Section 4

Section 4. Section 7-2-18.1 NMSA 1978 (being Laws 1981, Chapter 170, Section 1, as amended) is amended to read:

"7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT INDIGENCY.--

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from the resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants, including property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises. "Cost of maintaining a household" shall not include expenses otherwise incurred, including cost of clothing, education, medical treatment, vacations, life insurance, transportation and mortgages;

(3) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident;

(4) "disabled person" means a person who has a medically determinable physical or mental impairment, as certified by a licensed physician, that renders such person unable to engage in gainful employment;

(5) "gainfully employed" means working for remuneration for others, either full time or part time, or self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child day care expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for which the credit is claimed;

(3) compensates a caregiver for child day care for a qualifying dependent to enable such resident together with his spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children, a program under the New Mexico Works Act or any successor program during any period for which the credit provided by this section is claimed; and

(5) has a modified gross income, including child support payments, if any, of not more than the annual income that would be derived from earnings at double the federal minimum wage.

C. The credit provided for in this section shall be forty percent of the actual compensation paid to a caregiver by the resident for a qualifying dependent not to exceed four hundred eighty dollars ($480) for each qualifying dependent or a total of one thousand two hundred dollars ($1,200) for all qualifying dependents for a taxable year. For the purposes of computing the credit, actual compensation shall not exceed eight dollars ($8.00) per day for each qualifying dependent.

D. The caregiver shall furnish the resident with a signed statement of compensation paid by the resident to the caregiver for day care services. Such statements shall specify the dates and the total number of days for which payment has been made.

E. If the resident taxpayer has a federal tax liability, the taxpayer shall claim from the state not more than the difference between the amount of the state child care credit for which the taxpayer is eligible and the federal credit for child and dependent care expenses the taxpayer is able to deduct from federal tax liability for the same taxable year; provided, for first year residents only, the amount of the federal credit for child and dependent care expenses may be reduced to an amount equal to the amount of federal credit for child and dependent care expenses the resident is able to deduct from federal tax liability multiplied by the ratio of the number of days of residence in New Mexico during the resident's taxable year to the total number of days in the resident's taxable year.

F. The credit provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the credit exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. A husband and wife maintaining a household for one or more qualifying dependents and filing separate returns for a taxable year for which they could have filed a joint return:

(1) may each claim only one-half of the credit that would have been claimed on a joint return; and

(2) are eligible for the credit provided in this section only if their joint modified gross income, including child support payments, if any, is not more than the annual income that would be derived from earnings at double the federal minimum wage."

Chapter 47 Section 5

Section 5. A new section of the Income Tax Act is enacted to read:

"OPTIONAL REFUND CONTRIBUTION PROVISIONS--CONDITIONAL REPEAL.--

A. By August 31, 2000, and by August 31 of every succeeding year, the secretary shall determine the total amount contributed through the preceding July 31 on returns filed for taxable years ending in the preceding calendar year pursuant to each provision of the Income Tax Act that allows a taxpayer the option of directing the department to contribute all or any part of an income tax refund due the taxpayer to a specified account, fund or entity.

B. If the secretary's determination pursuant to Subsection A of this section regarding an optional refund contribution provision is that the total amount contributed is less than five thousand dollars ($5,000), exclusive of directions for contributions disregarded under Subsection C of this section, the secretary shall certify that fact to the secretary of state. Any optional refund contribution provision for which a certification is made for three consecutive years is repealed, effective on the January 1 following the third certification.

C. The department shall disregard a direction on a return to make an optional refund contribution if the amount of refund due on the return is determined by the department to be less than the sum of the amounts directed to be contributed.

D. Notwithstanding the provisions of Section 7-1-26 NMSA 1978, a taxpayer may not claim and the department may not allow a refund with respect to any optional refund contribution that was made by the department at the direction of the taxpayer."

Chapter 47 Section 6

Section 6. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year; "base income" also includes interest received on a state or local bond;

D. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as corporations under the Internal Revenue Code;

E. "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;

F. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

G. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

H. "net income" means base income adjusted to exclude:

(1) income from obligations of the United States less expenses incurred to earn that income;

(2) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(3) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(4) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event may a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

I. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

J. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (3) or (4) of Subsection H of this section, may be excluded from base income;

K. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

N. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

O. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of that act, the period for which the return is made;

P. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act; and

Q. "unitary corporations" means two or more integrated corporations, other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

(1) there is a unity of operations evidenced by central purchasing, advertising, accounting or other centralized services;

(2) there is a centralized management or executive force and centralized system of operation; or

(3) the operations of the corporations are dependent upon or contribute property or services to one another individually or as a group."

Chapter 47 Section 7

Section 7. Section 7-4-2 NMSA 1978 (being Laws 1965, Chapter 203, Section 2, as amended) is amended to read:

"7-4-2. DEFINITIONS.--As used in the Uniform Division of Income for Tax Purposes Act:

A. "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and income from the disposition or liquidation of a business or segment of a business. "Business income" includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

B. "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "nonbusiness income" means all income other than business income;

F. "sales" means all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978 of the Uniform Division of Income for Tax Purposes Act;

G. "secretary" means the secretary of taxation and revenue or a division director delegated by the secretary; and

H. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof."

Chapter 47 Section 8

Section 8. Section 7-7-4 NMSA 1978 (being Laws 1973, Chapter 345, Section 4) is amended to read:

"7-7-4. NONRESIDENTS--TAX IMPOSED--EXEMPTION.--

A. Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in New Mexico of every nonresident.

B. The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in New Mexico and the denominator of which is the value of the decedent's gross estate.

C. For purposes of this section, the following is included as property located in New Mexico:

(1) debts arising from transactions in, or having a business situs in, New Mexico; and

(2) the securities of any corporation or other entity organized under the laws of New Mexico.

D. The transfer of the personal property of a nonresident is exempt from the tax imposed by this section to the extent that the personal property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled."

Chapter 47 Section 9

Section 9. REPEAL.--Section 7-2C-14 NMSA 1978 (being Laws 1985, Chapter 106, Section 14, as amended) is repealed.

Chapter 47 Section 10

Section 10. APPLICABILITY.--The provisions of Sections 2, 3, 4, 6 and 7 of this act apply to the 1999 and subsequent taxable years.

Chapter 47 Section 11

Section 11. RETROACTIVE EFFECTIVE DATE.--The effective date of the provisions of Section 1 of this act is May 20, 1998.

HOUSE BILL 349

CHAPTER 48

RELATING TO DOMESTIC ABUSE; PROVIDING THAT STATE COURTS SHALL GIVE FULL FAITH AND CREDIT TO ORDERS OF PROTECTION ISSUED BY COURTS OF OTHER STATES; AMENDING A SECTION OF THE FAMILY VIOLENCE PROTECTION ACT.

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

Chapter 48 Section 1

Section 1. Section 40-13-6 NMSA 1978 (being Laws 1987, Chapter 286, Section 6, as amended) is amended to read:

"40-13-6. SERVICE OF ORDER--DURATION--PENALTY --REMEDIES NOT EXCLUSIVE.--

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the respondent, unless he or his attorney was present at the time the order was issued. The order shall be filed and served without cost to the petitioner.

B. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the petitioner and the respondent.

C. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order pursuant to this section.

D. State courts shall give full faith and credit to tribal court orders of protection and orders of protection issued by courts of other states. A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

E. A person convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and order the person convicted to participate in and complete a program of professional counseling, at his own expense, if possible.

G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.

H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the petitioner."

Chapter 48 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 351, AS AMENDED

CHAPTER 49

RELATING TO MOTOR VEHICLES; CHANGING CERTAIN PROVISIONS OF THE MOTOR VEHICLE CODE TO PROVIDE MORE EFFICIENT HANDLING OF REVENUE DISTRIBUTIONS AND TO MAKE TECHNICAL CORRECTIONS; MAKING APPROPRIATIONS; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Chapter 49 Section 1

Section 1. Section 66-2-6 NMSA 1978 (being Laws 1978, Chapter 35, Section 10) is amended to read:

"66-2-6. AUTHORITY TO ADMINISTER OATHS.--Officers and employees of the department designated by the secretary or secretary's delegate are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures.

Chapter 49 Section 2

Section 2. Section 66-2-7 NMSA 1978 (being Laws 1978, Chapter 35, Section 11, as amended) is amended to read:

"66-2-7. RECORDS OF THE DEPARTMENT.--

A. All records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, other than those declared by law to be confidential for the use of the department, shall be open to public inspection during office hours.

B. Disposition of obsolete records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, shall be made in accordance with the provisions of the Public Records Act.

C. The department may copy or abstract records of the department relating to the administration and enforcement of the Motor Vehicle Code and any other law relating to motor vehicles, the administration and enforcement of which is charged to the department, to the extent permitted by law. The copies or abstracts may be made in paper, electronic, microfilm, optical or other formats. Duly certified copies of official records shall be deemed valid and given the same weight and consideration as original records.

D. Any person may purchase copies, printouts or abstracts of records of the department described in Subsection A of this section. The copies, printouts or abstracts may be made in paper, electronic, microfilm, optical or other formats. The department may make a reasonable charge for the furnishing of copies, printouts or abstracts and for certifying any such copy."

Chapter 49 Section 3

Section 3. Section 66-2-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 20, as amended) is amended to read:

"66-2-16. ADMINISTRATIVE SERVICE FEES--COLLECTION-- REMITTANCE--PAYMENT--OPTIONAL SERVICE FEES--APPROPRIATION.--

A. The secretary is authorized to establish by rule or regulation a schedule of administrative service fees to be collected by the agents or department to defray the costs of operation of the agents' or department's offices and of rendering service to the public. Fees shall be fifty cents ($.50) for each item or transaction or service performed by the agent or department for the secretary and shall be collected in addition to all other fees and taxes imposed.

B. All sums collected by an agent or the department as administrative service fees shall be remitted as provided in Section 66-2-15 NMSA 1978.

C. Administrative service fees remitted by department employees shall be deposited by the state treasurer into the motor vehicle suspense fund and distributed in accordance with Section 66-6-23 NMSA 1978.

D. Notwithstanding the provisions of Subsections A through C of this section, no class A county with a population exceeding three hundred thousand or municipality with a population exceeding three hundred thousand within a class A county designated as an agent pursuant to Section 66-2-14.1 NMSA 1978 shall be paid an administrative service fee.

E. The secretary is authorized to establish by regulation fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted pursuant to this subsection shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service.

F. The secretary shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and identify each office exceeding ten thousand aggregate transactions per year."

Chapter 49 Section 4

Section 4. Section 66-5-33.1 NMSA 1978 (being Laws 1985, Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR REGISTRATION--FEE.--

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement, compliance with all appropriate provisions of the Motor Vehicle Code and the payment of a fee of twenty-five dollars ($25.00) is a prerequisite to the reinstatement of any license or registration.

B. If a driver's license was suspended or revoked for driving while under the influence of intoxicating liquor or drugs, for aggravated driving while under the influence of intoxicating liquor or drugs or for a violation of the Implied Consent Act, an additional fee of seventy-five dollars ($75.00) is required to be paid to reinstate the driver's license. Fees collected pursuant to this subsection are appropriated to the local governments road fund. The department shall maintain an accounting of the fees collected pursuant to this subsection and shall report that amount upon request to the legislature."

Chapter 49 Section 5

Section 5. Section 66-6-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 336, as amended) is amended to read:

"66-6-1. MOTORCYCLES--REGISTRATION FEES.--

A. For the registration of motorcycles, the department shall collect the following fees for a twelve-month registration period:

(1) for each motorcycle having not more than two wheels in contact with the ground, eleven dollars ($11.00); and

(2) for each motorcycle having three wheels in contact with the ground or having a sidecar, eleven dollars ($11.00).

B. In addition to other fees required by this section, the department shall collect, for each motorcycle, an annual tire recycling fee of fifty cents ($.50) for a twelve-month registration period.

Chapter 49 Section 6

Section 6. Section 66-6-22.1 NMSA 1978 (being Laws 1990, Chapter 120, Section 34) is amended to read:

"66-6-22.1. MOTOR VEHICLE SUSPENSE FUND CREATED--RECEIPTS--DISBURSEMENTS.--

A. There is created in the state treasury a fund to be known as the "motor vehicle suspense fund".

B. The fees collected under the provisions of Sections 66-1-1 through 66-6-19 and 67-16-14 NMSA 1978 shall be paid to the state treasurer for the credit of the motor vehicle suspense fund not later than the close of the second business day after their receipt.

C. Money deposited to the credit of or disbursed from the motor vehicle suspense fund shall be accounted for as provided by law or regulation of the secretary of finance and administration. Disbursements from the motor vehicle suspense fund shall be made by

the department of finance and administration upon request and certification of their appropriateness by the secretary of finance and administration or the secretary's delegate.

D. The balance of the motor vehicle suspense fund is appropriated for the purpose of making refunds, distributions and other disbursements authorized or required by law to be made from the motor vehicle suspense fund, provided that no distribution shall be made to a municipality, county or fee agent operating a motor vehicle field office with respect to money collected and remitted to the department by that municipality, county or fee agent until the report of the municipality, county or fee agent is audited and accepted by the department."

Chapter 49 Section 7

Section 7. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

"66-6-23. DISPOSITION OF FEES.--

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining in the motor vehicle suspense fund, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office:

(a) an amount equal to six dollars ($6.00) per driver's license and three dollars ($3.00) per identification card or motor vehicle or motorboat registration or title transaction performed; and

(b) for each such agent determined by the secretary pursuant to Subsection F of Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or any municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar ($1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field office, an amount equal to fifty cents ($.50) for each administrative service fee remitted by that county or municipality to the department pursuant to the provisions of Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(b) the remainder of each driver's license fee collected by the department employees from an applicant to whom a license is granted after deducting from the driver's license fee the amount of the distribution authorized in Paragraph (1) of this subsection with respect to that collected driver's license fee; and

(c) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

(b) an amount equal to two dollars ($2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections J and K of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-3-16 NMSA 1978, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978; and

(d) the amounts due to the department pursuant to Paragraph (1) of Subsection E of Section 66-3-419 NMSA 1978, Subsection E of Section 66-3-422 NMSA 1978 and Subsection E of Section 66-3-423 NMSA 1978;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the state highway and transportation department, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) to the state equalization guarantee distribution made annually pursuant to the general appropriation act, an amount equal to one hundred percent of the driver safety fee collected pursuant to Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars ($2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the rubberized asphalt fund, forty-five percent of all tire recycling fees collected pursuant to the provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and 66-6-8 NMSA 1978;

(13) to the tire recycling fund, the amount remaining, after distributions pursuant to Paragraph (12) of this subsection have been made to the rubberized asphalt fund, from all annual tire recycling fees collected pursuant to the provisions of Sections 66-6-1, 66-6-2, 66-6-4, 66-6-5 and

66-6-8 NMSA 1978;

(14) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state; and

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 67-16-14 NMSA 1978.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise re-designated without a corresponding change to Subsection A of this section, the reference in Subsection A of this section shall be construed to be the recompiled or re-designated paragraph, subsection or section."

Chapter 49 Section 8

Section 8. A new section of the Motor Vehicle Code, Section 66-6-23.1 NMSA 1978, is enacted to read:

"66-6-23.1. FORMULAIC DISTRIBUTION.--

A. The balance from Section 66-6-23 NMSA 1978 shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) sixty-six and five hundred forty-one thousandths percent shall be distributed to the state road fund;

(2) ten and thirty-two thousandths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection B of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) ten and thirty-two thousandths percent shall be transferred to the counties, with each county receiving an amount equal to the proportion, determined by the secretary of highway and transportation in accordance with Subsection D of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights of way and material pits. For this purpose, the board of county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of highway and transportation the total mileage as of April 1 of that year; provided that in their report, the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By agreement and in cooperation with the state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) five and three hundred fifty-eight thousandths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection B of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities pursuant to the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In any county in which there are no incorporated municipalities, the amount allocated pursuant to this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) eight and thirty-seven thousandths percent shall be allocated among the counties in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection B of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county. For the purposes of this paragraph, the term "computed taxes due" for any jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

B. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the proportions which the department is required to determine pursuant to Subsection A of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions that the department of finance and administration is required to determine pursuant to Subsection B of this section based upon the net taxable value, as that term is defined in the Property Tax Code, and the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

C. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

D. The board of county commissioners of each of the respective counties shall, by April 1 of every year, certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of April 1 of every year; provided that in their reports, the boards of county commissioners shall identify each of the public

roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county. The mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. Distribution of amounts to any county for road purposes shall be made in accordance with this section.

E. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of any year, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year, and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages."

Chapter 49 Section 9

Section 9. REPEAL.--Section 66-6-20 NMSA 1978 (being Laws 1978, Chapter 35, Section 355) is repealed.

Chapter 49 Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 457

CHAPTER 50

RELATING TO PUBLIC AFFAIRS; DECLARING FAMILY DAY IN NEW MEXICO.

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

Chapter 50 Section 1

Section 1. FAMILY DAY.--The governor shall proclaim the second Sunday in September of each year as "Family Day". Suitable exercises for the observance of the day shall be held in the state capitol and elsewhere as the governor designates.

HOUSE BILL 463

CHAPTER 51

EXPANDING THE PURPOSE FOR STATE HIGHWAY BONDS AUTHORIZED FOR THE SOUTHWEST LOOP IN ALBUQUERQUE PURSUANT TO SUBSECTION F OF

SECTION 1 OF CHAPTER 85, LAWS 1998; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 51 Section 1

Section 1. SOUTHWEST LOOP IN ALBUQUERQUE--STATE HIGHWAY BONDS--EXPAND PURPOSE.--If the proceeds from state highway bonds authorized pursuant to Subsection F of Section 1 of Chapter 85 of Laws 1998 and appropriated to the state highway and transportation department for construction of the southwest loop in Albuquerque, including the Paseo del Volcan interchange at interstate 40, cannot be used for that project in a timely manner, the state highway and transportation department may use the proceeds to improve any road classified as a current or future principal arterial that is located south of interstate 40 and west of interstate 25 in Bernalillo county and the proceeds are appropriated for that purpose.

Chapter 51 Section 2

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

HOUSE BILL 564

CHAPTER 52

RELATING TO MILITARY AFFAIRS; CONCERNING CERTIFICATES OF INDEBTEDNESS; AMENDING SECTION 20-1-6 NMSA 1978 (BEING LAWS 1987, CHAPTER 318, SECTION 6); DECLARING AN EMERGENCY.

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

Chapter 52 Section 1

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

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

A. All compensation of personnel and all the necessary expenses incurred in quartering, housing, caring for, subsisting, protecting, equipping, warning for duty and transporting such officers and members and their equipment, including the purchase or lease of any articles of material, equipment or supplies reasonably required, designed or needed to accomplish the purpose or results desired by the governor or specified in his call for

such troops into service of the state, shall be paid by the state. The state treasurer, upon presentation to him of vouchers and payrolls for such compensation, expenses, supplies and materials, certified by the officers commanding such forces and approved by the adjutant general, shall pay the vouchers and payrolls out of any money available in the state treasury not otherwise appropriated, provided that the vouchers and payrolls for such service, supplies and materials do not exceed two hundred fifty thousand dollars ($250,000) in any one fiscal year.

B. If there is no money available in the state treasury which is not otherwise appropriated or if the vouchers and payrolls for such service, material and supplies approach the amount of two hundred fifty thousand dollars ($250,000) in any one fiscal year, the state treasurer shall certify such facts to the governor who shall inquire into and make an estimate of the total probable cost necessary to be incurred for all purposes in connection with or to accomplish the purpose for which such troops were called into active service. If he deems it necessary and prudent in order to provide for the public defense that such expenses be incurred and that it is necessary to create an indebtedness for the purpose of paying the expenses, the governor shall by proclamation declare an emergency to exist requiring the creation of an indebtedness under Article 9, Section 7 of the constitution of New Mexico in order to suppress insurrection or to provide for the public defense. The governor shall order the issuance of certificates of indebtedness in such amount as he deems required or necessary to provide funds for the payment of any expenses and costs incident to or connected with the emergency.

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

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

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

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

Chapter 52 Section 2

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

HOUSE BILL 662, AS AMENDED

CHAPTER 53

RELATING TO MOTOR VEHICLES; PROVIDING FOR CONFIDENTIALITY OF MOTOR VEHICLE-RELATED RECORDS.

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

Chapter 53 Section 1

Section 1. Section 66-2-7.1 NMSA 1978 (being Laws 1995, Chapter 135, Section 4, as amended) is amended to read:

"66-2-7.1. MOTOR VEHICLE-RELATED RECORDS--CONFIDENTIAL.--

A. It is unlawful for any department employee or contractor or for any former department employee or contractor to disclose to any person other than another employee of the department any personal information about an individual obtained by the department in

connection with a driver's license or permit, the titling or registration of a vehicle or an identification card issued by the department pursuant to the Motor Vehicle Code except:

(1) to the individual or the individual's authorized representative;

(2) for use by any governmental agency, including any court, in carrying out its functions or by any private person acting on behalf of the government;

(3) for use in connection with matters of motor vehicle and driver safety or theft; motor vehicle emissions; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; motor vehicle production alterations, recalls or advisories; and removal of non-owner records from original owner records of motor vehicle manufacturers;

(4) for use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(5) for use by any insurer or insurance support organization or by a self-insured entity or its agents, employees or contractors in connection with claims investigation activities, antifraud activities, rating or underwriting;

(6) for providing notice to owners of towed or impounded vehicles;

(7) for use by an employer or its agent or insurer in obtaining or verifying information relating to a holder of a commercial driver's license;

(8) for use by any requester if the requester demonstrates that it has obtained the written consent of the individual to whom the information pertains;

(9) for use by an insured state-chartered or federally chartered credit union; an insured state or national bank; an insured state or federal savings and loan association; or an insured savings bank, but only:

(a) to verify the accuracy of personal information submitted by an individual to the credit union, bank, savings and loan association or savings bank; and

(b) if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest from the individual; or

(10) for providing organ donor information as provided in the Uniform Anatomical Gift Act or Section 66-5-10 NMSA 1978.

B. Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978."

HOUSE BILL 691, AS AMENDED

CHAPTER 54

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CHANGING THE CASH PAYMENT PROVIDED TO THOSE NEW MEXICO WORKS PARTICIPANTS WHO DO NOT RECEIVE GOVERNMENT-SUBSIDIZED HOUSING OR HOUSING PAYMENTS; DECLARING AN EMERGENCY.

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

Chapter 54 Section 1

Section 1. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7) is amended to read:

"27-2B-7. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of federal and state funds and based upon appropriations by the legislature of the available federal temporary assistance for needy families grant made pursuant to the federal act in the following categories:

(1) cash assistance;

(2) child-care services;

(3) other services; and

(4) administrative costs.

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary assistance for needy families grant made pursuant to the federal act.

B. Only a benefit group receiving a cash benefit of seventy-five dollars ($75.00) or greater, excluding any housing subsidy payment, and who are not living in government-subsidized housing or receiving government-subsidized housing payments shall receive an additional housing allowance of fifty dollars ($50.00) per month.

C. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

(1) medicaid;

(2) food stamps;

(3) government-subsidized foster care and adoption payments;

(4) supplemental security income;

(5) government-subsidized housing or housing payments;

(6) federally excluded income;

(7) educational payments made directly to an educational institution;

(8) government-subsidized child care;

(9) earned and unearned income that belongs to a person seventeen years of age or younger who is not the head of household;

(10) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate;

(11) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works over thirty-five hours per week and the other works over twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department;

(12) unearned income that belongs to the household group but not to the benefit group;

(13) fifty dollars ($50.00) of collected child support passed through to the participant by the department's child support enforcement program; and

(14) other income sources as determined by the department.

D. Earned income over one hundred thirty percent of the federal poverty guidelines that belongs to the household group but not to the benefit group is countable income. The department shall count the entire household group to determine family size when applying the federal poverty guidelines.

E. The department shall count the entire household group to determine family size when applying the financial standard of need. For a benefit group to be eligible to participate:

(1) gross countable earned income, that belongs to the household group but not to the benefit group, must not exceed one hundred eighty-five percent of the financial standard of need; and

(2) net countable earned income that belongs to the household group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection F of this section.

F. Subject to the availability of state and federal funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned gross income and then subtracting that amount from the benefit group's financial standard of need:

(1) one hundred fifty dollars ($150) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred fifty dollars ($250) of monthly earned income and one-half of the remainder for each parent;

(2) monthly payments made for child care at a maximum of two hundred dollars ($200) for a child under two years of age and at a maximum of one hundred seventy-five dollars ($175) for a child two years of age or older;

(3) costs of self-employment income; and

(4) business expenses.

G. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group."

Chapter 54 Section 2

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

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 908, AS AMENDED

CHAPTER 55

RELATING TO ELECTIONS; REPEALING THE ABSENTEE BALLOT CANCELLATION AT DEATH SECTION OF THE ABSENT VOTER ACT.

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

Chapter 55 Section 1

Section 1. REPEAL.--Section 1-6-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 142) is repealed.

SENATE BILL 228

CHAPTER 56

RELATING TO CULTURAL AFFAIRS; CHANGING THE NAME OF THE NEW MEXICO HISPANIC CULTURAL CENTER TO THE NATIONAL HISPANIC CULTURAL CENTER OF NEW MEXICO.

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

Chapter 56 Section 1

Section 1. Section 18-12-1 NMSA 1978 (being Laws 1993, Chapter 42, Section 1) is amended to read:

"18-12-1. SHORT TITLE.--Chapter 18, Article 12 NMSA 1978 may be cited as the "National Hispanic Cultural Center of New Mexico Act"."

Chapter 56 Section 2

Section 2. Section 18-12-2 NMSA 1978 (being Laws 1993, Chapter 42, Section 2) is amended to read:

"18-12-2. DEFINITIONS.--As used in the National Hispanic Cultural Center of New Mexico Act:

A. "board" means the board of directors of the center;

B. "center" means the national Hispanic cultural center of New Mexico;

C. "division" means the Hispanic cultural division of the office of cultural affairs; and

D. "executive director" means the executive director of the division."

Chapter 56 Section 3

Section 3. Section 18-12-3 NMSA 1978 (being Laws 1993, Chapter 42, Section 3) is amended to read:

"18-12-3. HISPANIC CULTURAL DIVISION--CREATION-- PROPERTY.--

A. The "Hispanic cultural division" is created within the office of cultural affairs. A principal facility of this division shall be known as the "national Hispanic cultural center of New Mexico".

B. All property, real or personal, now held or subsequently acquired for the operation of the center shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified."

Chapter 56 Section 4

Section 4. Section 18-12-4 NMSA 1978 (being Laws 1993, Chapter 42, Section 4) is amended to read:

"18-12-4. BOARD OF DIRECTORS--CREATED-- APPOINTMENT--TERMS--OFFICERS.--

A. The "board of directors of the national Hispanic cultural center of New Mexico" is created. The board shall consist of fifteen residents of New Mexico appointed by the governor with the advice and consent of the senate. Two of the appointees shall be employees of state institutions of higher education or appropriate state agencies. In making the appointments, the governor shall give due consideration to:

(1) the ethnic, economic and geographic diversity of the state;

(2) individuals who have demonstrated an awareness of and support for traditional and contemporary Hispanic culture, arts and humanities, including a strong knowledge of New Mexico Hispanic history; and

(3) individuals who are knowledgeable in the areas of Hispanic performing, visual and oral arts, genealogy, family issues, education, business and administration.

B. Of the initial appointees, five members shall be appointed for four-year terms, five members shall be appointed for three-year terms and five members shall be appointed for two-year terms. All subsequent members shall be appointed for four-year terms.

C. A majority of the board members currently serving shall constitute a quorum at any meeting or hearing.

D. Any member failing to attend three consecutive meetings after receiving proper notice shall be recommended for removal by the governor. The governor may also remove any member of the board for neglect of any duty required by law, for incompetency, for unprofessional conduct or for violating any provisions of the National Hispanic Cultural Center of New Mexico Act. If a vacancy occurs on the board, the governor shall appoint another member to complete the unexpired term.

E. The executive director shall be an ex-officio nonvoting member of the board.

F. The governor shall designate the president of the board, who shall serve in that capacity at the pleasure of the governor."

SENATE BILL 376

CHAPTER 57

REPEALING SECTIONS 7-27-5.8 THROUGH 7-27-5.12 NMSA 1978 (BEING LAWS 1988, CHAPTER 134, SECTIONS 1 THROUGH 5) TO ELIMINATE THE OIL AND GAS PRODUCTION ASSISTANCE COUNCIL.

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

Chapter 57 Section 1

Section 1. REPEAL.--Sections 7-27-5.8 through 7-27-5.12 NMSA 1978 (being Laws 1988, Chapter 134, Sections 1 through 5) are repealed.

SENATE BILL 521

CHAPTER 58

RELATING TO FIREWORKS SAFETY; PROVIDING PROCEDURES FOR DETERMINING IF EXTREME OR SEVERE DROUGHT CONDITIONS EXIST; REDUCING THE AMOUNT OF THE LICENSE OR PERMIT FEE THAT MAY BE CHARGED BY MUNICIPALITIES OR COUNTIES; DECLARING AN EMERGENCY.

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

Chapter 58 Section 1

Section 1. Section 60-2C-2 NMSA 1978 (being Laws 1989, Chapter 346, Section 2, as amended) is amended to read:

"60-2C-2. DEFINITIONS.--As used in the Fireworks Licensing and Safety Act:

A. "chaser" means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical composition and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed fifty milligrams may be included to produce a report;

B. "chemical composition" includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;

C. "cone fountain" means a cardboard or heavy paper cone containing no more than fifty grams of pyrotechnic composition that has the same effect as a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

D. "crackling device" means a sphere or paper tube that contains no more than twenty grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion. Crackling devices are not subject to the fifty-milligram limit of firecrackers;

E. "cylindrical fountain" means a cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke. The device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

F. "display distributor" means any person, firm or corporation selling display fireworks;

G. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks;

H. "distributor" means any person, firm or corporation selling fireworks to wholesalers and retailers for resale;

I. "explosive composition" means any chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;

J. "firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to one hundred thirty milligrams of explosive composition per report;

K. "fireworks" means devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as "permissible fireworks" or "display fireworks";

L. "flitter sparkler" means a narrow paper tube attached to a stick or wire and filled with no more than five grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at one end of the tube is ignited to make the device function;

M. "ground spinner" means a small, rapidly spinning device containing no more than twenty grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color. "Ground spinner" is similar in operation to a wheel, but is intended to be placed flat on the ground and ignited;

N. "helicopter" or "aerial spinner" means a tube containing no more than twenty grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight;

O. "illuminating torch" means a cylindrical tube containing no more than one hundred grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

P. "manufacturer" means any person, firm or corporation engaged in the manufacture of fireworks;

Q. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than forty grams of chemical composition plus not more than twenty grams of lift charge per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report. A mine may contain more than one tube, but the tubes must fire in sequence upon ignition of one external fuse and the total chemical composition, including lift charges, of a multiple tube device shall not exceed two hundred grams;

R. "missile-type rocket" means a device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than twenty grams of chemical composition;

S. "permissible fireworks" means fireworks legal for sale to and use in New Mexico by the general public;

T. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;

U. "retailer" means any person, firm or corporation purchasing fireworks for resale to consumers;

V. "roman candle" means a heavy paper or cardboard tube containing no more than twenty grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect;

W. "specialty retailer" means any person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;

X. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight;

Y. "toy smoke device" means a small plastic or paper item containing no more than one hundred grams of pyrotechnic composition that produces white or colored smoke as the primary effect;

Z. "wheel" means a pyrotechnic device that is made to attach to a post or other surface and that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have one or more drivers, each of which contains no more than sixty grams of pyrotechnic composition and the total wheel contains no more than two hundred grams total pyrotechnic composition;

AA. "wholesaler" means any person, firm or corporation purchasing fireworks for resale to retailers; and

BB. "wildlands" means any lands covered wholly or in part by timber, brush or native grass."

Chapter 58 Section 2

Section 2. Section 60-2C-4 NMSA 1978 (being Laws 1989, Chapter 346, Section 4, as amended) is amended to read:

"60-2C-4. LICENSE AND PERMIT FEES.--

A. An applicant for a license or permit under the Fireworks Licensing and Safety Act shall pay to the state fire marshal's office the following fees, which shall not be refundable:

(1) manufacturer license $1,500;

(2) distributor license. 2,000;

(3) wholesaler license 1,000;

(4) display distributor license. . . 1,000;

(5) specialty retailer license . . . 750; or

(6) retailer permit. . . . . 100.

B. All licenses and permits shall be issued for one year beginning on February 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application, except that no application shall be processed during any holiday selling period in which permissible fireworks may be sold.

C. Licenses issued pursuant to provisions of the Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may require licenses or permits and reasonable fees, not to exceed twenty-five dollars ($25.00), for the sale of fireworks.

D. Permit and license fees paid to the state fire marshal's office shall be deposited in the fire protection fund to be used by the state fire marshal to enforce and carry out the provisions and purposes of the Fireworks Licensing and Safety Act."

Chapter 58 Section 3

Section 3. Section 60-2C-8.1 NMSA 1978 (being Laws 1997, Chapter 17, Section 9) is amended to read:

"60-2C-8.1. EXTREME OR SEVERE DROUGHT CONDITIONS-- RESTRICTED SALE AND USE.--

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

B. Pursuant to any hearing under Subsection A of this section, the governing body of a municipality shall issue a proclamation declaring extreme or severe drought conditions within the boundaries of the incorporated municipality if the governing body determines such conditions exist. The governing body's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

C. The municipal governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

D. A municipal governing body's proclamation shall be effective for thirty days and the governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

E. The governing body of a county may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the county affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

F. Pursuant to any hearing under Subsection E of this section, the governing body of a county shall issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of the county if the governing body determines such conditions exist. The governing body's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

G. The county governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the county governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or

rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved."

Chapter 58 Section 4

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

SENATE PUBLIC AFFAIRS COMMITEE

SUBSTITUTE FOR SENATE BILL 606

CHAPTER 59

RELATING TO PUBLIC LANDS; AUTHORIZING THE COMMISSIONER OF PUBLIC LANDS TO NEGOTIATE FOR THE TRADE OF STATE TRUST LANDS FOR EAGLE NEST LAKE, DAM AND SURROUNDING AREA.

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

Chapter 59 Section 1

Section 1. EAGLE NEST LAKE--NEGOTIATION AND ACQUISITION--USE.--

A. The commissioner of public lands may:

(1) negotiate, on behalf of the state trust beneficiaries, for the acquisition of the Eagle Nest lake, dam and the surrounding land; and

(2) upon completion of successful negotiations, certify to the secretary of finance and administration that the negotiations have been successful, that the trade is in the best interests of the state trust beneficiaries and that the appraised value of the land exchanged is equal to or lower than the appraised value of the acquired property.

B. In negotiating the acquisition pursuant to Subsection A of this section, the commissioner may agree to trade state land in the same area or vicinity for the lake, dam and surrounding area.

C. If the negotiations and acquisition pursuant to this section are successful, the commissioner of public lands shall lease the Eagle Nest lake, dam and surrounding area to the state parks division of the energy, minerals and natural resources department, on terms that are in the best interests of the state trust beneficiaries, for use as a state park and fishing area.

SENATE BILL 704

CHAPTER 60

RELATING TO TITLE INSURANCE; ENACTING THE TITLE INSURANCE GUARANTY ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 60 Section 1

Section 1. SHORT TITLE.--Sections 1 through 18 of this act may be cited as the "Title Insurance Guaranty Act".

Chapter 60 Section 2

Section 2. PURPOSE.--The purpose of the Title Insurance Guaranty Act is to provide a mechanism for continuation of coverage and payment of covered claims under certain title insurance policies, to avoid excessive delay in payment and avoid financial loss to policyholders because of insolvency of a title insurer, to assist in detection and prevention of title insurer insolvencies and to provide an association to assess the cost of such protection among title insurers.

Chapter 60 Section 3

Section 3. SCOPE.--The Title Insurance Guaranty Act applies to all insurers authorized to transact title insurance business in New Mexico.

Chapter 60 Section 4

Section 4. DEFINITIONS.--As used in the Title Insurance Guaranty Act:

A. "account" means an account created by Section 5 of the Title Insurance Guaranty Act;

B. "association" means the title insurance guaranty association;

C. "covered claim" means an unpaid claim of an insured in excess of one thousand dollars ($1,000) covered under and not in excess of the applicable limits of a title insurance policy insuring land located in New Mexico issued by an insolvent insurer, if the insurer is found insolvent pursuant to Paragraph (2) of Subsection D of this section after the effective date of the Title Insurance Guaranty Act. Subject to applicable policy limits, the association's liability for covered claims shall not exceed two hundred fifty thousand dollars ($250,000) per claim and does not include any amount in excess of two hundred fifty thousand dollars ($250,000) per claim. The total amount that may be recovered from the association by a claimant for all covered claims shall not exceed five hundred thousand dollars ($500,000). "Covered claim" does not include an amount due

by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise; provided, that a claim asserted against a person insured by an insolvent insurer that, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, would be a covered claim, may be filed directly with the receiver of the insolvent insurer. In no event may any such claim be asserted in a legal or administrative action against the insolvent insurer's insured unless that claim is based on the insured's fraud. "Covered claim" does not include the amount of a claim that an insured recovers from any person, including an agent, regardless of whether an assignment is taken. "Covered claim" does not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorney fees and expenses and court costs, nor does it include punitive, exemplary, extracontractual or bad-faith damages awarded by a court judgment against an insurer;

D. "insolvent insurer" means an insurer:

(1) authorized to transact title insurance business in New Mexico at the time the title insurance policy was issued; and

(2) against which an order of liquidation with a finding of insolvency has been entered after the effective date of the Title Insurance Guaranty Act by a court of competent jurisdiction in the insurer's state of domicile, or in this state, which has not been stayed or been the subject of a writ of supersedeas or other comparable order;

E. "member insurer" means any insurer authorized to transact title insurance business in New Mexico;

F. "net written premiums" means gross premiums written in this state on title insurance policies. "Net written premiums" does not include premiums on contracts between insurers or reinsurers;

G. "person" means an individual or other legal entity;

H. "superintendent" means the superintendent of insurance; and

I. "title insurance policy" or "policy" means those terms as defined in Section 59A-30-3 NMSA 1978 with respect to policies issued on land located in New Mexico.

Chapter 60 Section 5

Section 5. ORGANIZATION OF ASSOCIATION.--All member insurers shall remain members of the association as a condition of their authority to transact insurance in this state. The association may take the form of any appropriate legal entity under New Mexico law, including a corporation, partnership or unincorporated association, as approved by the superintendent. For purposes of administration and assessment, the association shall have two separate accounts:

A. the administrative account; and

B. the title guaranty account.

Chapter 60 Section 6

Section 6. BOARD OF DIRECTORS.--

A. The association's board of directors shall consist of not less than five nor more than eleven appointed members serving terms as provided in the association's plan of operation, and the superintendent or his designated representative as an ex-officio member. Appointed board members shall be selected by member insurers, subject to the superintendent's approval. A majority of the appointed members shall be employed by member insurers. Vacancies shall be filled for the remaining term by majority vote of the remaining board members, subject to the superintendent's approval.

B. Board members may be reimbursed from the administrative account for any reasonable and necessary expenses incurred in their capacities as board members, but the amount of such reimbursement shall not exceed guidelines provided by the approved plan of operation.

Chapter 60 Section 7

Section 7. DUTIES AND POWERS OF THE ASSOCIATION.--

A. The association shall:

(1) be obligated to the extent of covered claims arising from policies of an insolvent insurer issued prior to the finding of insolvency, except that the association shall not be obligated as to policies replaced by another title insurance policy that covers the claim. In no event shall the association be obligated to a policyholder in an amount in excess of the obligation of the insolvent insurer under the policy;

(2) be deemed the insolvent insurer to the extent of the insurer's obligation on covered claims and to such extent shall have all rights, duties and obligations of the insurer as if the insurer had not become insolvent; provided that the association shall have no liability for any past claims based on negligence of the insurer or its agents in searching and reporting the condition of a title, on bad faith of the insolvent insurer, on the closing of any transaction or for exemplary or punitive damages;

(3) pay for the administration and operation of the association from the administrative account, through proceeds received from an annual guaranty fee to be collected in the amounts and manner established by rule of the superintendent;

(4) allocate claims payments, loss and adjustment expense and administrative expense to the appropriate accounts and assess member insurers, separately for each account,

amounts necessary to pay the association's obligations subsequent to an insolvency. Assessments shall not be made in a year in which guaranty fee proceeds, together with unencumbered account balances and other assets, will be sufficient to satisfy the association's obligations. Assessments shall be made against each member insurer in the proportion that the member insurer's net written premiums for the last full calendar year bears to net written premiums of all member insurers for that calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in a year an amount greater than two percent of that member insurer's net written premiums for the preceding calendar year. If it appears that the maximum assessment available, together with unencumbered account balances and other assets, will be insufficient in a year to make all necessary payments, the association's obligations shall be paid pro rata and the unpaid portion shall be paid as soon as additional assessment proceeds or other funds become available. The association may pay claims in an order that it deems reasonable, including payments as claims are received or by groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of a member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority in any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer acting as a servicing facility may set off against an assessment any authorized payments made on covered claims and expenses incurred in the payment of the claims by such member insurer if they are chargeable to the account for which the assessment is made;

(5) investigate claims and adjust, compromise, settle and pay covered claims to the extent of the association's obligations, and deny all other claims. The association may review settlements, releases and judgments to which the insolvent insurer or its insureds are parties to determine the extent to which such settlements, releases and judgments may be properly contested;

(6) notify such persons as the superintendent may direct pursuant to Section 9 of the Title Insurance Guaranty Act;

(7) receive, handle, adjust and pay claims through its employees or through one or more insurers or other persons designated as servicing facilities, subject to the superintendent's approval; provided that a member insurer may decline any such designation;

(8) reimburse each servicing facility for obligations of the association paid by the facility and for reasonable expenses incurred by the facility for handling claims on behalf of the association, and pay other expenses of the association authorized by the Title Insurance Guaranty Act; and

(9) refund excess funds in an account to member insurers in proportion to the contribution of each member insurer to that account, when the board of directors estimates that the assets in the account will exceed the liabilities for the coming year.

B. The association may:

(1) employ persons or contract with servicing facilities necessary to handle claims and to perform other association duties;

(2) borrow funds necessary to effectuate the purposes of the Title Insurance Guaranty Act in accordance with the plan of operation, subject to the superintendent's approval;

(3) sue or be sued, and intervene in any court or other forum having jurisdiction over an insolvent insurer or its insureds;

(4) negotiate and enter into contracts necessary to carry out the purposes of the Title Insurance Guaranty Act; and

(5) perform all other acts necessary or proper to effectuate the purposes of the Title Insurance Guaranty Act.

Chapter 60 Section 8

Section 8. PLAN OF OPERATION.--

A. The association shall submit to the superintendent a plan of operation and amendments to the plan necessary or suitable to ensure the fair, reasonable and equitable administration of the association. The plan of operation and amendments shall become effective upon the superintendent's written approval. If, at any time, the association fails to submit the plan or suitable amendments to the superintendent, he shall, after notice and hearing, adopt necessary or advisable rules to effectuate the provisions of the Title Insurance Guaranty Act. The rules shall continue in force until the superintendent modifies them or they are superseded by a plan or amendments submitted by the association and approved by the superintendent.

B. All member insurers shall comply with the association's plan of operation.

C. The association's plan of operation, among other things, shall establish all procedures for conducting the association's business, for handling its assets, for receiving, handling, adjusting and paying claims, for keeping records and for the conduct of other activities necessary to carry out the association's powers and duties.

D. The association's plan of operation may provide that any of the association's powers and duties, except those specified in Paragraph (3) of Subsection A and Paragraph (2) of Subsection B of Section 7 of the Title Insurance Guaranty Act, be delegated to a corporation, association or other organization that performs or will perform functions similar to those of the association in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility and paid for performing any other function.

Chapter 60 Section 9

Section 9. DUTIES AND POWERS OF SUPERINTENDENT.--

A. The superintendent shall:

(1) promptly forward to the association a copy of any complaint or petition seeking an order of liquidation with a finding of insolvency against a title insurer;

(2) notify the association that a title insurer has been found to be an insolvent insurer not later than three days after he receives notice of the finding; and

(3) upon request of the board of directors, provide the association with a statement of the net written premiums of each member insurer.

B. The superintendent may:

(1) require that the association or an insolvent insurer's licensed New Mexico agents notify the insurer's New Mexico insureds and other interested parties of the finding of insolvency and of their rights under the Title Insurance Guaranty Act. Notification shall be made by mail at the last known address; provided that if sufficient information for notification by mail is not available, notice by publication in one or more newspapers of general circulation in the state shall be sufficient;

(2) suspend or revoke, after notice and hearing, a member insurer's certificate of authority if the insurer fails to pay any assessment within thirty days after it was due or fails to comply with the association's plan of operation. In the alternative, the superintendent may impose a civil penalty not to exceed five percent of the unpaid assessment per month; provided that no civil penalty shall be less than one hundred dollars ($100) per month; and

(3) revoke the designation of any servicing facility if he finds that claims are not being handled satisfactorily.

Chapter 60 Section 10

Section 10. EFFECT OF PAID CLAIMS.--

A. A person recovering under the Title Insurance Guaranty Act shall be deemed to have assigned his rights and claims under the insolvent insurer's policy to the association to the extent of his recovery from the association. Every insured seeking the protection of the Title Insurance Guaranty Act shall cooperate with the association to the same extent as required to cooperate with the insurer. The association shall have no cause of action against an insured for sums it has paid out except such causes of action as the insurer would have had. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims by the association do not operate to reduce the

liability of the insured to the receiver, liquidator or statutory successor for unpaid assessments.

B. The court having jurisdiction shall grant claims assigned pursuant to Subsection A of this section and the claims expenses of the association or similar organization in another state the same priority as the claims had before assignment. The association may make application to the court for reimbursement of such claims and expenses and, upon proper application, the court shall order appropriate disbursement to be made.

C. The association shall, within the time set by the receivership court, file with the receiver or liquidator of the insolvent insurer, statements of paid claims and claims expense and reserves for unpaid claims and claims expense.

Chapter 60 Section 11

Section 11. NONDUPLICATION OF RECOVERY.--A person having a claim under any other title insurance policy that is not an insolvent insurer's policy, which is also a covered claim, shall first exhaust his rights under such other title insurance policy. An amount payable for a covered claim shall be reduced by the amount of any recovery under such other title insurance policy.

Chapter 60 Section 12

Section 12. PREVENTION OF INSOLVENCIES.--

A. To aid in the detection and prevention of title insurer insolvencies, the association's board of directors may, upon majority vote:

(1) make recommendations to the superintendent for the detection and prevention of insolvencies; and

(2) respond to requests by the superintendent to discuss and make recommendations regarding the status of a member insurer whose financial condition may be hazardous to policyholders or the public. Recommendations pursuant to this paragraph shall not be available for public inspection.

B. The superintendent shall report to the association's board of directors when he has reasonable cause to believe that a title insurer may be insolvent or in a financial condition hazardous to its policyholders or the public. The report, and subsequent meetings, activities, recommendations and decisions of the board of directors as required or permitted in this subsection, shall not be open to the public or available for public inspection.

C. At the conclusion of a domestic title insurer insolvency for which the association was obligated to pay covered claims, the association's board of directors may prepare a report on the history and causes of such insolvency, based on the information available

to the association, and submit the report to the superintendent. The report, and subsequent meetings, activities, recommendations and decisions of the board of directors as required or permitted in this section, shall not be open to the public or available for public inspection.

Chapter 60 Section 13

Section 13. EXAMINATION OF ASSOCIATION--FINANCIAL REPORTS.--The association is subject to the superintendent's examination and regulation pursuant to Chapter 59A, Article 4 NMSA 1978. The board of directors shall submit, not later than June 30 each year, a financial report for the preceding calendar year prepared by an independent certified public accountant acceptable to the superintendent. The financial report shall be in a form approved by the superintendent.

Chapter 60 Section 14

Section 14. APPEALS.--

A. An insured whose claim is denied in whole or in part by the association may request the receivership court, or the ancillary receivership court in this state, to review the association's decision. The request for review shall be filed within thirty days after the date of denial. The receivership court and ancillary receivership court in this state shall have exclusive jurisdiction of all such claims. The decision of the court shall be binding on both the claimant and the association.

B. A member insurer may appeal to the superintendent from any action of the association's board of directors by filing a notice of appeal within thirty days after the date of the action appealed from.

C. A final order of the superintendent pursuant to Subsection B of this section is subject to judicial review by an action in the district court of Santa Fe county to set aside the order as unlawful or not supported by substantial evidence. If judicial review is not sought within thirty days after the date of the superintendent's order, the order shall be final and not subject to appeal.

Chapter 60 Section 15

Section 15. RECOGNITION OF ASSESSMENT IN RATES.--The title insurance rates and premiums promulgated by the superintendent shall include amounts sufficient to recoup within three years after assessment a sum equal to the amounts paid to the association by the member insurers, less amounts returned to the member insurers by the association. Rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurers. The entire amount of any such recoupment shall be passed through to insurers.

Chapter 60 Section 16

Section 16. IMMUNITY--CONFIDENTIALITY.--

A. There shall be no liability on the part of, and no cause of action of any nature shall exist against, a member insurer, the association or its agents or employees, the board of directors, an individual director or the superintendent or his representative for an action taken by them in connection with carrying out their powers and duties under the Title Insurance Guaranty Act or failure to prevent any insolvency. The association shall defend all actions alleging such liability except that the attorney general shall defend any such actions against the superintendent or his representatives.

B. The meetings, activities, recommendations and decisions of the board of directors pursuant to the Title Insurance Guaranty Act shall not be open to the public or available for public inspection; provided that no representative of a member insurer shall be excluded from a meeting of the board of directors, with the exception of a representative of an insolvent insurer.

Chapter 60 Section 17

Section 17. STAY OF PROCEEDINGS--REOPENING OF DEFAULT JUDGMENTS.--All proceedings in which the insolvent insurer is a party or is obligated to represent a party in a court in New Mexico shall be stayed for not to exceed six months from the date of a finding of insolvency to permit proper representation by the association of all pending causes of action. As to covered claims arising from a judgment under a decision, verdict or finding resulting from the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of the insured, may apply to have the judgment, order, decision, verdict or finding set aside by the same court, administrator or arbitrator that made it and may defend against the claim on its merits.

Chapter 60 Section 18

Section 18. TERMINATION--DISTRIBUTION OF FUNDS.--

A. The superintendent shall by order terminate the operation of the association if he finds, after hearing, that there is in effect a statutory or voluntary plan that:

(1) is a permanent plan that is adequately funded or for which an adequate means of funding is provided; and

(2) extends or will extend, to New Mexico title insurance policyholders and residents, protection and benefits with respect to insolvent insurers not less favorable than the protection provided under the Title Insurance Guaranty Act.

B. If the association's operation is terminated, the association, as soon as possible, shall distribute the balance of money and assets remaining, after discharge of the

functions of the association with respect to prior insurer insolvencies not covered by another plan, to member insurers that are then writing title insurance policies in this state, pro rata upon the basis of the aggregate of payments and assessments made by the respective insurers during the five years next preceding the date of the order.

Chapter 60 Section 19

Section 19. Section 59A-30-6 NMSA 1978 (being Laws 1985, Chapter 28, Section 6) is amended to read:

"59A-30-6. PREMIUMS--AGENCY AGREEMENTS--DUTY TO FIX RATES--EXCEPTION.--

A. The superintendent shall promulgate the premium rates of title insurers and title insurance agents for title insurance policies and the percentage of premium to be retained by title insurers under agency agreements, except that premium rates for reinsurance as between title insurers shall not be promulgated by the superintendent. No premium that has not been promulgated by the superintendent shall be charged for any title insurance policy. The superintendent shall not promulgate charges of title insurers and title insurance agents other than premium rates for title insurance policies and the percentage of premium to be retained by title insurers under agency agreements.

B. The superintendent shall promulgate additional premium rates for searches or examinations of title conducted or performed for the purpose of issuance of a title insurance policy when the search or examination involves more than one chain of title or other unusual complexity.

C. Premium rates promulgated by the superintendent shall not be excessive, inadequate or unfairly discriminatory and shall contain an allowance permitting a profit that is not unreasonable in relation to the riskiness of the business of title insurance. Premium rates may include an allowance for recoupment of assessments made pursuant to the Title Insurance Guaranty Act."

Chapter 60 Section 20

Section 20. Section 59A-30-11 NMSA 1978 (being Laws 1985, Chapter 28, Section 11) is amended to read:

"59A-30-11. UNDERWRITING STANDARDS AND RECORD RETENTION.--

A. No title insurance policy may be written unless the title insurer or its title insurance agent has caused to be conducted a reasonable search and examination of the title using an abstract plant meeting the requirements of Section 59A-12-13 NMSA 1978 and has caused to be made a determination of insurability of title in accordance with sound underwriting practices. The duty to search and examine imposed by this section is

solely for the purpose of enhancing the financial stability of title insurers for the benefit of insureds under title insurance policies. The New Mexico Title Insurance Law is not intended and should not be construed to create any duty to search and examine that runs to the benefit of, or to create any right or cause of action in favor of, any person other than a title insurer.

B. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title insurance agent for a period of not less than fifteen years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title insurance agent may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original. This subsection shall not apply to:

(1) a title insurer assuming liability through a contract of reinsurance; or

(2) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with this section."

Chapter 60 Section 21

Section 21. Section 59A-30-14 NMSA 1978 (being Laws 1985, Chapter 28, Section 14) is amended to read:

"59A-30-14. OTHER PROVISIONS APPLICABLE.--To the extent not in conflict with the New Mexico Title Insurance Law, the following articles and provisions of the Insurance Code shall also apply to title insurers, title insurance agents and the business of title insurance:

1.Scope of Code; Initial Definitions; General Penalty.

2.Insurance Division.

4.Examinations, Hearings and Appeals.

5.Authorization of Insurers and General Requirements.

6.Fees and Taxes.

7.Kinds of Insurance; Limits of Risk; Reinsurance.

8.Assets and Liabilities.

9.Investments.

10.Administration of Deposits; Trusteed Assets of lien Insurer.

11.Licensing Procedures, Agents, Solicitors, Brokers, Adjusters and Others.

12.Insurance Agents, Brokers and Solicitors.

15.Unauthorized Insurers.

16.Trade Practices and Frauds.

34.Domestic Stock and Mutual Insurers.

37.Insurance Holding Companies.

surance Guaranty Act."

SENATE BILL 297, AS AMENDED

CHAPTER 61

RELATING TO MOTOR VEHICLES; PROVIDING THAT DWI OFFENDERS MAY BE REQUIRED TO HAVE IGNITION INTERLOCK DEVICES PLACED ON THEIR MOTOR VEHICLES.

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

Chapter 61 Section 1

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 1997, Chapter 43, Section 1 and also by Laws 1997, Chapter 205, Section 1) is amended to read:

"66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this state.

B. It is unlawful for any person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive any vehicle within this state.

C. It is unlawful for any person who has an alcohol concentration of eight one-hundredths or more in his blood or breath to drive any vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one-hundredths or more in his blood or breath while driving any vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction under this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars ($300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the traffic safety bureau of the state highway and transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed under this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction under this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence under this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction under this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars ($1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding

any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, each offender shall be sentenced to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars ($500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars ($750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction under this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction under this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program and, if necessary, a treatment program approved by the court. The penalty imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. Upon any subsequent misdemeanor conviction under this section prior to July 1, 2003, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating on all motor vehicles owned by the offender or available for the offender's personal use, pursuant to rules adopted by the traffic safety bureau.

J. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

K. A conviction under a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States that is equivalent to New

Mexico law for driving while under the influence of intoxicating liquor or drugs, and prescribes penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction under this section for purposes of determining whether a conviction is a second or subsequent conviction.

L. In addition to any other fine or fee which may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

M. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 240

CHAPTER 62

RELATING TO DRIVER'S LICENSES; INCREASING THE AVAILABILITY OF LIMITED DRIVER'S LICENSES SUBJECT TO CERTAIN CRITERIA AND CONDITIONS OF PROBATION; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 62 Section 1

Section 1. Section 66-5-35 NMSA 1978 (being Laws 1978, Chapter 35, Section 257, as amended) is amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR REVOCATION--HEARING--REVIEW.--

A. Upon suspension or revocation of a person's driver's license following conviction or adjudication as a delinquent under any law, ordinance or regulation relating to motor vehicles, a person may apply to the department for a license or permit to drive, limited to use allowing him to engage in gainful employment or to attend school, except that no person shall be eligible to apply:

(1) for a limited commercial driver's license;

(2) for a limited license when the person's driver's license was revoked pursuant to the provisions of the Implied Consent Act, except as provided in Subsection B of this section;

(3) for a limited license when the person's license was revoked pursuant to an offense for which the person is a subsequent offender as defined in the Motor Vehicle Code, except that a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs, may apply for and shall receive a limited license if he complies with the requirements set forth in Subsections C and D of this section; or

(4) for a limited license when the person's driver's license was revoked pursuant to a conviction for committing homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978.

B. A person whose driver's license is revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 or for the second or third time pursuant to the provisions of Paragraph (3) Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license or permit thirty days after suspension or revocation of his license if the person pays every fee, meets the criteria for limited driving privileges established in rules by the department and provides the department with documentation of the following:

(1) that the person is enrolled in a DWI school approved by the traffic safety bureau and an approved alcohol screening program;

(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act;

(3) if the person's driver's license is revoked pursuant to the provisions of Paragraph (3) of Subsection C of Section 66-8-111 NMSA 1978, the person shall provide proof that each motor vehicle to be operated by the person, if he receives a limited license, shall be equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau; and either proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment; or

(4) that the person is enrolled in school and needs a limited license to travel to and from school.

C. A person who is convicted a second or third time for driving under the influence of intoxicating liquor or

drugs may apply for and shall receive a limited license thirty days after suspension or revocation of his license if the person pays every fee, meets the criteria for limited driving privileges established in rule by the department and provides the department with documented proof:

(1) of enrollment in a DWI school approved by the traffic safety bureau and an approved alcohol screening program;

(2) of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and either

(3) of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment; or

(4) of enrollment in school and that the person needs a limited license to travel to and from school.

D. In addition to the requirements set forth in Subsection C of this section, a person who is convicted a second or third time for driving under the influence of intoxicating liquor or drugs shall provide the department with his judgment and sentence. The judgment and sentence shall attest that the person will be on probation for the entire period that a limited license will be in effect and that, as a condition of probation, the person shall provide proof that each motor vehicle to be operated by the person is equipped with an ignition interlock device installed and operated pursuant to rules adopted by the traffic safety bureau. The ignition interlock device shall be installed on the appropriate motor vehicle at the person's expense.

E. Upon receipt of a fully completed application that complies with statutes and rules for a limited license and payment of the fee specified in this subsection, the department shall issue a limited license or permit to the applicant showing the limitations specified in the approved application. For each limited license or permit to drive, the applicant shall pay to the department a fee of forty-five dollars ($45.00), which shall be transferred to the state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

F. The department, within twenty days of denial of an application for a limited driver's license or permit pursuant to this section, shall afford the applicant a hearing in the county in which the applicant resides, unless the department and the licensee agree that the hearing may be held in some other county. The department may extend the twenty-day period, provided that the extension is in writing and made no later than fifteen days after receipt of an application. Upon hearing, the hearing officer designated by the department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The hearing officer shall make specific findings as to whether the applicant has shown proof of financial responsibility for the future and enrollment in an approved DWI school and an approved alcohol screening program and meets established uniform criteria for limited driving privileges adopted by rule of the department. The hearing officer shall enter an order

either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in this subsection are not found by the hearing officer, the applicant's request for a limited license or permit shall not be approved.

G. A person adversely affected by an order of the hearing officer may seek review within thirty days in the district court in the county in which he resides. On review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or permit to drive."

Chapter 62 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 248, AS AMENDED

CHAPTER 63

RELATING TO LEGAL NOTICE; AMENDING PUBLICATION REQUIREMENTS.

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

Chapter 63 Section 1

Section 1. Section 14-11-2 NMSA 1978 (being Laws 1937, Chapter 167, Section 2) is amended to read:

"14-11-2. REQUIREMENT FOR PUBLICATION OF LEGAL NOTICE OR ADVERTISEMENT.--Any and every legal notice or advertisement shall be published in a daily, tri-weekly, a semi-weekly or a weekly newspaper of general circulation that can be obtained by single copy and that is entered under the second class postage privilege in the county in which the notice or advertisement is required to be published; which newspaper, if published tri-weekly, semi-weekly or weekly, shall have been so published in the county continuously and uninterruptedly during the period of at least twenty-six consecutive weeks next prior to the first issue thereof containing any such notice or advertisement, and which newspaper, if published daily, shall have been so published in the county uninterruptedly and continuously during the period of at least six months next prior to the first issue thereof containing any such notice or advertisement; provided that the mere change in the name of any newspaper or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the newspaper is in fact continuously and uninterruptedly printed and published within the county as provided in this section; provided further that a newspaper shall not lose its rights as a legal publication if it fails to publish one or more

of its issues by reason of fire, flood, accident, transportation embargo or tie-up or other casualty beyond the control of the publisher; provided further that any legal notice which fails of publication for the required number of insertions by reasons beyond the control of the publisher shall not be declared illegal if the publication has been made in one issue of the publication; and provided further that if in any county in this state there has not been published any newspaper for the prescribed period at the time when any such notice or advertisement is required to be published, the notice or advertisement may be published in any newspaper having a general circulation or published and printed in whole or in part in that county and that can be obtained by single copy in that county."

HOUSE BILL 432

CHAPTER 64

RELATING TO ALCOHOLIC BEVERAGES; CLARIFYING THE AREA OF LICENSED PREMISES ON A GOLF COURSE; AMENDING A SECTION OF THE LIQUOR CONTROL ACT.

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

Chapter 64 Section 1

Section 1. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended) is amended to read:

"60-3A-3. DEFINITIONS.--As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters;

B. "beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale and stout;

C. "brewer" means any person who owns or operates a business for the manufacture of beer;

D. "club" means:

(1) any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state with a membership of not less than fifty members who pay membership dues at the rate of not less than five dollars ($5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full

membership privileges and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds:

(a) is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and

(b) the proposed licensee has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for such exemption as soon as it is eligible; or

(2) an airline passenger membership club operated by an air common carrier which maintains or operates a clubroom at an international airport terminal. For the purposes of this paragraph, "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the civil aeronautics board;

E. "commission" means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

F. "department" means the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "director" means the director of the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "dispenser" means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises;

I. "distiller" means any person engaged in manufacturing spirituous liquors;

J. "golf course" means a tract of land and facilities used for playing golf and other recreational activities that includes tees, fairways, greens, hazards, putting greens,

driving ranges, recreational facilities, patios, pro shops, cart paths and public and private roads that are located within the tract of land;

K. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

L. "hotel" means any establishment or complex having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five sleeping rooms;

M. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, hotel, golf course or racetrack, "licensed premises" includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course or racetrack;

N. "local option district" means any county which has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality which falls within a county which has voted to approve the sale, serving or public consumption of alcoholic beverages, or any incorporated municipality of over five thousand population which has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

O. "manufacturer" means a distiller, rectifier, brewer or winer;

P. "minor" means any person under twenty-one years of age;

Q. "package" means any immediate container of alcoholic beverages which is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers;

R. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

S. "rectifier" means any person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors;

T. "restaurant" means any establishment having a New Mexico resident as a proprietor or manager which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of

payment and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in regulations promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

U. "retailer" means any person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in his possession with the intent to sell any alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises;

V. "spirituous liquors" means alcoholic beverages as defined in Subsection A of this section except fermented beverages such as wine, beer and ale;

W. "wholesaler" means any person whose place of business is located in New Mexico and who sells, offers for sale or possesses for the purpose of sale any alcoholic beverages for resale by the purchaser;

X. "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, which do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

Y. "wine bottler" means any New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale;

Z. "winegrower" means any person who owns or operates a business for the manufacture of wine; and

AA. "winer" means a winegrower."

Chapter 64 Section 2

Section 2. Section 60-6A-31 NMSA 1978 (being Laws 1993, Chapter 68, Section 37) is amended to read:

"60-6A-31. STATE FAIR--GOLF COURSES--ALCOHOLIC BEVERAGE SALES RESTRICTIONS.--Sales, service, delivery or consumption of alcoholic beverages shall be permitted on the grounds of the state fair and on the grounds of golf courses only on the licensed premises in controlled access areas of the state fair and golf courses, the designation of which has been negotiated as part of the license application or renewal process."

Chapter 64 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 465

CHAPTER 65

RELATING TO PUBLIC LANDS; AMENDING A CERTAIN SECTION OF THE NMSA 1978 TO EXPAND THE CRITERIA BY WHICH OIL WELLS MAY QUALIFY FOR A LOWER ROYALTY RATE.

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

Chapter 65 Section 1

Section 1. Section 19-10-5.1 NMSA 1978 (being Laws 1994, Chapter 105, Section 1) is amended to read:

"19-10-5.1. AMENDMENT OF LEASE TO LOWER ROYALTY RATE FOR OIL WELLS UNDER CERTAIN CONDITIONS.--

A. The record owner of an oil and gas lease issued by the commissioner of public lands whose lease is maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations may apply to the commissioner for an amendment to the lease for the purpose of changing the royalty rate on oil produced from a specified oil well.

B. An application for a change in royalty rate shall be on a form prescribed by the commissioner of public lands and shall be accompanied by an application fee. The application shall:

(1) show that an oil well has produced oil attributable to the lease premises and:

(a) if the production is from formations shallower than five thousand feet, has produced less than an average of three barrels of oil per day during the preceding twelve months and has not averaged over five barrels of oil per day for any month during the preceding twelve months; or

(b) if the production is from formations five thousand feet deep or deeper, has produced less than an average of six barrels of oil per day during the preceding twelve months and has not averaged over ten barrels of oil per day for any month during the preceding twelve months; and

(2) include a statement that to the best of the applicant's knowledge and experience the well is not capable of sustained production over the production limits specified in Paragraph (1) of this subsection.

C. Upon receipt of an application, the commissioner of public lands shall review the information submitted as well as other independent information obtainable by the commissioner and shall agree to amend the lease to a lower royalty rate for oil produced from the oil well if, in his sole discretion, he finds that:

(1) the operator has taken reasonable steps to minimize his costs of operating the oil well;

(2) the oil well will likely be plugged and abandoned in the near future, with a resulting loss of reserves, if operating costs are not reduced further;

(3) the oil well will produce for a longer period, and the amount of oil produced will ultimately be larger, if the royalty rate is lowered; and

(4) a lower royalty rate will actually maximize revenue to the trust beneficiaries.

D. Any lower royalty rate agreed to under this section shall be equal to five percent and shall be valid for a period of three years, after which time the record owner of the oil and gas lease issued by the commissioner of public lands may submit a request for extension.

E. The commissioner of public lands may promulgate regulations necessary to implement the provisions of this section.

F. The commissioner of public lands shall provide a cost-benefit analysis of the provisions of this section by December 1 of each year to the legislature and the governor."

HOUSE BILL 653

CHAPTER 66

RELATING TO STATE HOLIDAYS; ESTABLISHING AFRICAN-AMERICAN DAY ON THE SECOND FRIDAY IN FEBRUARY; ENACTING A SECTION OF THE NMSA 1978.

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

Chapter 66 Section 1

Section 1. AFRICAN-AMERICAN DAY.--The second Friday of February of each year shall be set apart and be known as "African-American day", in recognition of the many contributions and sacrifices African-Americans have made to ensure the rights of all Americans, so that they may be free and equal citizens and full participants in the governing of the state and the nation. African-American day shall be observed by the people of New Mexico in efforts and undertakings that celebrate the diversity of the cultural heritage of New Mexicans, that recognize that February is Black history month

and that are expressions in harmony with the general character of the day so established.

HOUSE BILL 719

CHAPTER 67

RELATING TO PUBLIC PROPERTY; AUTHORIZING THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO NEGOTIATE AND PURCHASE CERTAIN PROPERTY; MAKING A TEMPORARY TRANSFER FROM THE CAPITOL BUILDINGS REPAIR FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 67 Section 1

Section 1. FINDINGS AND PURPOSE.--

A. The legislature finds that housing state agencies in buildings owned by the state results in significant recurring savings in agency operating budgets and that co-locating offices provides greater accessibility to the public served by state agencies. The legislature further finds that the property control division of the general services department and the capitol buildings planning commission have been researching potential property purchases that would enhance the initiative to guide future building projects at the central capitol complex and elsewhere and have identified two residences on Don Gaspar in the area of the central capitol complex for potential purchase.

B. The purpose of this act is to provide a mechanism for the negotiation and possible acquisition of the two residences by a temporary distribution of the income from the lands granted for the legislative, executive and judicial public buildings.

Chapter 67 Section 2

Section 2. PROPERTY CONTROL DIVISION--ADDITIONAL DUTIES--APPROPRIATION.--

A. The property control division of the general services department shall:

(1) negotiate, on behalf of the state, for the purchase of two residences on Don Gaspar in the area of the central capitol complex in Santa Fe; and

(2) upon completion of successful negotiations, certify to the secretary of finance and administration that the negotiations have been successful and that the purchase price agreed to is no higher than the appraised value.

B. Upon approval by the secretary of finance and administration that a purchase price agreed to pursuant to Subsection A of this section is not higher than the appraised value, so much of the property control reserve fund as is necessary to effectuate the purchase is appropriated to the property control division of the general services department for the purchase.

Chapter 67 Section 3

Section 3. TRANSFER.--Upon the approval pursuant to the provisions of Subsection B of Section 2 of this act, that portion of the uncommitted balance in the capitol buildings repair fund necessary to comply with Section 2 of this act shall be transferred to the property control reserve fund. It is the intent of the legislature that the amount transferred shall be restored to the capitol buildings repair fund.

Chapter 67 Section 4

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

HOUSE BILL 853

CHAPTER 68

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

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

Chapter 68 Section 1

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the New Mexico finance authority to make loans from the public project revolving fund to the following qualified entities for the following public projects on terms and conditions established by the authority:

A. to the city of Albuquerque for a street, sidewalk, curb, storm drainage, water, sanitary sewer and utility improvement district known as special assessment district 225;

B. to the city of Albuquerque for a street, sidewalk, curb, storm drainage, water, sanitary sewer and utility improvement district known as special assessment district 226;

C. to the village of Angel Fire for phase I of a special assessment district and the acquisition of vehicles;

D. to the Anthony water and sanitation district for infrastructure improvements;

E. to the Arroyo Seco mutual domestic water consumers association for a water project;

F. to the Berino mutual domestic water consumers association for a water project;

G. to the Butterfield Park mutual domestic water consumers association for a water project;

H. to the Canjilon water system for a water project;

I. to the Canones mutual domestic water consumers association for a water project;

J. to the Canyon mutual domestic water consumers association for a water project;

K. to the village of Capitan for a building project, acquisition of equipment and a water project;

L. to the Catron county Luna fire department for the acquisition of fire equipment;

M. to the Cebolla mutual domestic water consumers association for a water project;

N. to the Chamisal mutual domestic water consumers association for a water project;

O. to Chaves county for an administration building project, a judicial complex and the acquisition of equipment;

P. to the Cibola county Fence Lake fire department for the acquisition of fire equipment;

Q. to the town of Clayton for land acquisition and a recreation project;

R. to the Colfax county Ute Park fire department for the acquisition of fire equipment;

S. to the Cordova mutual domestic water consumers association for a water project;

T. to the Costilla mutual domestic water consumers association for a water project;

U. to the Cottonwood water cooperative for a water project;

V. to the De Baca county Valley fire department for the construction of fire substations;

W. to the Del Rio mutual domestic water consumers association for a water project;

X. to the Dona Ana county Chaparral fire department for a building project;

Y. to the Dreamland water users association for a water project;

Z. to the village of Eagle Nest for the acquisition of fire equipment;

AA. to the east Rio Arriba soil and water conservation district for the acquisition of equipment;

BB. to Eddy county for a building project;

CC. to the El Ancon mutual domestic water consumers association for a water project;

DD. to the El Salto mutual domestic water consumers association for a water project;

EE. to the town of Elephant Butte for the acquisition of fire equipment;

FF. to the Ensenada mutual domestic water consumers association for a water project;

GG. to the city of Eunice for the acquisition of fire equipment;

HH. to the Flora Vista water users association for a refinancing project and a water project;

II. to the French domestic water users association for a water project and a refinancing project;

JJ. to the Gallina water system for a water project;

KK. to the city of Gallup for the acquisition of fire equipment, wastewater projects and a water project;

LL. to the Glen Acres subdivision water system for a water project;

MM. to the village of Grady for a fire station project;

NN. to the Green Ridge water cooperative for a water project;

OO. to the Harding county fire district 1 for the acquisition of fire equipment;

PP. to the High Valley water users association for a water project;

QQ. to the Jicarilla Apache tribe for a wastewater project and a water project;

RR. to the La Manga water system for a water project;

SS. to the pueblo of Laguna or its wholly-owned enterprise, the Laguna rainbow corporation, for the refinancing of a public building project;

TT. to the Las Gallinas mutual domestic water consumers association for a water project;

UU. to the city of Las Vegas for a water project;

VV. to the Lava soil and water conservation district for the acquisition of a vehicle;

WW. to Lincoln county for a building project;

XX. to the Lincoln county Bonito fire department for a fire substation project;

YY. to the Lincoln county White Oaks fire department for a fire station project;

ZZ. to the village of Logan for a building project;

AAA. to Los Alamos county for a refinancing project, recreation project and an infrastructure project;

BBB. to the Los Ojos mutual domestic water consumers association for a water project;

CCC. to the lower Arroyo Hondo mutual domestic water consumers association for a water project;

DDD. to the Lumberton mutual domestic water consumers association for a water project;

EEE. to the Madrid village water cooperative for a water project;

FFF. to the Mescalero Ridge water cooperative for a water project;

GGG. to the Mesilla Valley regional dispatch authority, Dona Ana county, the city of Las Cruces or all or any of the above for a computer-aided dispatch project and a radio system upgrade project;

HHH. to the Monument water users association for a water project;

III. to the Moquino water system for a water project;

JJJ. to the Mora county Guadalupita fire department for the acquisition of fire equipment;

KKK. to the Mora county Ocate/Ojo Feliz fire department for a fire substation project;

LLL. to the Mora valley mutual domestic water consumers association for a water project;

MMM. to the Mora-Wagon Mound soil and water conservation district for the acquisition of equipment;

NNN. to the city of Moriarty for a water project and the acquisition of fire equipment;

OOO. to the Nara Visa water cooperative for a water project;

PPP. to the New Mexico state fair for a multipurpose arena and related facilities on the state fairgrounds;

QQQ. to Santa Fe Indian school, inc., a nonprofit corporation organized under the laws of the state of New Mexico, created by and whose members are the nineteen Indian pueblos of New Mexico: Acoma pueblo, Cochiti pueblo, Isleta pueblo, Jemez pueblo, Laguna pueblo, Nambe pueblo, Picuris pueblo, Pojoaque pueblo, San Felipe pueblo, Sandia pueblo, Santa Ana pueblo, Santa Clara pueblo, Santo Domingo pueblo, San Ildefonso pueblo, San Juan pueblo, Taos pueblo, Tesuque pueblo, Zia pueblo and Zuni pueblo, for a building project;

RRR. to the Orogrande mutual domestic water consumers association for a water project;

SSS. to the city of Portales for the acquisition of land and a recreation center and municipal building project;

TTT. to the Quemado school system for a water project;

UUU. to the village of Questa for the acquisition of fire equipment;

VVV. to the Rainsville water and sanitation district for a water project;

WWW. to the city of Raton for a water project;

XXX. to the Rio Chiquito water supply system for a water project;

YYY. to the Rodeo water users association for a water project;

ZZZ. to the Roosevelt county special hospital district for a hospital project;

AAAA. to the village of Roy for the acquisition of law enforcement equipment;

BBBB. to the village of Ruidoso Downs for a fire station project;

CCCC. to the village of San Ysidro fire department for the acquisition of fire equipment;

DDDD. to the Sangre de Cristo mutual domestic water consumers association for a water project;

EEEE. to the city of Santa Rosa for park and recreation projects;

FFFF. to the Sierra county Caballo fire department for the acquisition of fire equipment;

GGGG. to the Sile mutual domestic water consumers association for a water project;

HHHH. to the Solano water users association for a water project;

IIII. to the south Ojo Caliente mutual domestic water consumers association for a water project;

JJJJ. to the south San Ysidro mutual domestic water consumers association for a water project;

KKKK. to the town of Taos for wastewater projects;

LLLL. to the Tecolote mutual domestic water consumers association for a water project;

MMMM. to the Torrance county solid waste authority for a regional solid waste project;

NNNN. to the Thoreau water and sanitation district for a water project;

OOOO. to the village of Tularosa for the acquisition of land and a water project;

PPPP. to the Tyrone mutual domestic water consumers association for a water project;

QQQQ. to the Union county Amistad/Hayden fire department for the acquisition of fire equipment;

RRRR. to the upper Canoncito mutual domestic water consumers association for a water project;

SSSS. to the upper Des Montes mutual domestic water consumers association for a water project;

TTTT. to the upper La Plata water users association for a water project;

UUUU. to the Vallecitos mutual domestic water consumers association for a water project;

VVVV. to the village of Angel Fire fire department for the acquisition of fire equipment; and

WWWW. to San Miguel county for a refinancing project;

XXXX. to the western Mora soil and water conservation district for a building project and the acquisition of equipment;

YYYY. to the Abiquiu mutual domestic water and sewer association for a wastewater project;

ZZZZ. to the city of Deming for a solid waste project and a utility project;

AAAAA. to the city of Clovis for a public works administration building and related facilities;

BBBBB. to the Winterhaven cooperative association for a water project;

CCCCC. to the Youngsville mutual domestic water consumers association for a water project;

DDDDD. to the town of Carrizozo for a building project and a wastewater project;

EEEEE. to the El Rito mutual domestic water consumers association for a water project;

FFFFF. to the city of Las Vegas for a street project and water projects;

GGGGG. to the city of Lovington for a land acquisition and improvement project;

HHHHH. to McKinley county for a refinancing project;

IIIII. to the city of Rio Rancho for a land acquisition and improvement project and a road equipment project;

JJJJJ. to the town of Silver City for a wastewater project; and

KKKKK. to Curry county, Roosevelt county, Quay county, the city of Clovis, the city of Texico, the village of Melrose, the village of Grady, the city of Portales, the town of Elida, the city of Tucumcari, the village of San Jon, the village of Logan or a qualified entity formed by, or consisting of, the majority of the above, for planning and design of the Ute water development project.

Chapter 68 Section 2

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

2002 its desire to continue to pursue a loan from the public project revolving fund for a public project listed in Section 1 of this act, the legislative authorization granted to the New Mexico finance authority by Section 1 of this act to make a loan from the public project revolving fund to that qualified entity for that public project shall be void.

Chapter 68 Section 3

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

SENATE BILL 46, AS AMENDED

CHAPTER 69

RELATING TO GAME AND FISH; AUTHORIZING THE ISSUANCE OF ELK ENHANCEMENT PERMITS; MAKING AN APPROPRIATION.

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

Chapter 69 Section 1

Section 1. ELK ENHANCEMENT PERMIT--ISSUANCE--USE.--

A. The state game commission shall direct the department of game and fish to authorize two elk enhancement permits each license year for the taking of two elk bulls to raise funds for programs and projects to better manage elk.

B. The state game commission shall prescribe by rule the form, design and manner of issuance of the two elk enhancement permits. The issuance of one permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the elk enhancement permits shall be credited to the game protection fund to be used exclusively for elk restoration and management.

Chapter 69 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 87, AS AMENDED

CHAPTER 70

RELATING TO MUNICIPALITIES; AMENDING A SECTION OF THE MUNICIPAL CODE TO REMOVE THE KILOWATT BASIS FOR MUNICIPAL ELECTRIC UTILITY CHARGES.

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

Chapter 70 Section 1

Section 1. Section 3-24-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-23-2, as amended) is amended to read:

"3-24-2. ELECTRIC UTILITY--CHARGES.--A municipality owning and operating an electric utility shall charge only the person receiving the electric service. Charges shall not be limited to measurement by kilowatt or the kilowatt hour. The provisions of this section shall not apply to the sale by a municipality of surplus electric power and energy derived from its generating facility or its interest in a jointly owned generating facility."

SENATE BILL 88, AS AMENDED

CHAPTER 71

RELATING TO PUBLIC ASSISTANCE; AMENDING THE NEW MEXICO WORKS ACT TO CLARIFY THE COMPOSITION OF THE HOUSEHOLD GROUP.

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

Chapter 71 Section 1

Section 1. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and Laws 1998, Chapter 9, Section 4) is amended to read:

"27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--REVIEW PERIODS.--

A. Application for cash assistance or services shall be made to the department's county office in the county or district in which an applicant resides. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant having custody of a dependent child and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other household group members have at the time of the filing of the application and other information required by the department.

B. Application for expedited food stamps shall be made to the department's county office in the county or district in which an applicant resides. The department shall process the application for expedited food stamps within twenty-four hours after the application is made.

C. At the time of application for cash assistance and services, an applicant shall identify household group members who are to be counted in the benefit group. Once an application is approved, the participant shall advise the department if there are any changes in the membership of the household group or benefit group. A household group may contain more than one benefit group.

D. No later than forty-five days after an application is filed, the department shall provide to an applicant a resource planning session to ascertain his immediate needs, assess financial and nonfinancial options, make referrals and act on the application.

E. No later than five days after an application is approved, the department shall provide reimbursement for child care.

F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. Within fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

H. After the initial assessment of skills, the department shall work with the participant to develop an individual responsibility plan that:

(1) sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) sets forth obligations of the participant that may include a requirement that the participant attend school, maintain certain grades and attendance, keep his school-age children in school, immunize his children or engage in other activities that will help the participant become and remain employed;

(3) is designed to the greatest extent possible to move the participant into whatever employment the participant is capable of handling and to provide additional services as necessary to increase the responsibility and amount of work the participant will handle over time;

(4) describes the services the department may provide so that the participant may obtain and keep employment; and

(5) may require the participant to undergo appropriate substance abuse treatment.

I. The participant and a representative of the department shall sign the participant's individual responsibility plan.

J. The participant shall also sign a participation agreement that designates the number of hours that he must participate in work activities to meet participation standards.

K. The department shall review the current financial eligibility of a benefit group when the department reviews food stamp eligibility.

L. The department shall meet semi-annually with a participant to review and revise his individual responsibility plan.

M. The department shall develop a complaint procedure to address issues pertinent to the delivery of services and other issues relating to a participant's individual responsibility plan."

SENATE BILL 119, AS AMENDED

CHAPTER 72

RELATING TO THE DEAF AND HARD OF HEARING; CLARIFYING THE MEMBERSHIP AND APPOINTMENT OF THE COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS.

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

Chapter 72 Section 1

Section 1. Section 28-11B-1 NMSA 1978 (being Laws 1991, Chapter 72, Section 1) is amended to read:

"28-11B-1. COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS CREATED.--

A. There is created the "commission for deaf and hard-of-hearing persons", consisting of seven members, a majority of whom are deaf or hard-of-hearing persons, including three ex-officio members and four members appointed by the governor without regard for party affiliation, with the advice and consent of the senate. Terms of appointed members shall be for six years, expiring on December 31 of odd-numbered years, in accordance with the staggered terms of the appointed members holding office on the effective date of this 1999 amendment.

B. Ex-officio members are:

(1) the president of the New Mexico association for the deaf or his designee;

(2) the superintendent of the New Mexico school for the deaf or his designee; and

(3) the director of the vocational rehabilitation division of the state department of public education or his designee who shall be knowledgeable in the area of deafness.

C. Appointed members are:

(1) a parent of a deaf or hard-of-hearing child;

(2) a professional person who is deaf or hard of hearing;

(3) a deaf or hard-of-hearing person who resides in southern New Mexico; and

(4) a deaf or hard-of-hearing person who resides in northern New Mexico.

D. A majority of the members of the commission for deaf and hard-of-hearing persons constitutes a quorum for transaction of business. The commission shall elect a chairman from its membership.

E. Members of the commission for deaf and hard-of-hearing persons shall be compensated as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. Commission members who are serving upon the effective date of this 1999 act shall serve out the terms to which they were appointed."

SENATE BILL 162

CHAPTER 73

RELATING TO FAMILY LAW; EXPANDING THE CONSIDERATIONS FOR THE COURT WHEN A GRANDPARENT PETITIONS FOR VISITATION WITH A CHILD; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 73 Section 1

Section 1. Section 40-9-2 NMSA 1978 (being Laws 1993, Chapter 93, Section 3) is amended to read:

"40-9-2. CHILDREN--VISITATION BY GRANDPARENT--PETITION--MEDIATION.--

A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act, or at any time after the entry of the judgment, the district court may grant reasonable visitation privileges to a grandparent of a minor child, not in conflict with the child's education or prior established visitation or time-sharing privileges.

B. If one or both parents of a minor child are deceased, any grandparent of the minor child may petition the district court for visitation privileges with respect to the minor. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

C. If a minor child resided with a grandparent for a period of at least three months and the child was less than six years of age at the beginning of the three-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

D. If a minor child resided with a grandparent for a period of at least six months and the child was six years of age or older at the beginning of the six-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

E. A biological grandparent may petition the district court for visitation privileges with respect to a grandchild when the grandchild has been adopted or adoption is sought, pursuant to the provisions of the Adoption Act, by:

(1) a stepparent;

(2) a relative of the grandchild;

(3) a person designated to care for the grandchild in the provisions of a deceased parent's will; or

(4) a person who sponsored the grandchild at a baptism or confirmation conducted by a recognized religious organization.

F. When a minor child is adopted by a stepparent and the parental rights of the natural parent terminate or are relinquished, the biological grandparents are not precluded from attempting to establish visitation privileges. When a petition filed pursuant to the provisions of the Grandparent's Visitation Privileges Act is filed during the pendency of an adoption proceeding, the petition shall be filed as part of the adoption proceedings. The provisions of the Grandparent's Visitation Privileges Act shall have no application in

the event of a relinquishment or termination of parental rights in cases of other statutory adoption proceedings.

G. When considering a grandparent's petition for visitation privileges with a child, the district court shall assess:

(1) any factors relevant to the best interests of the child;

(2) the prior interaction between the grandparent and the child;

(3) the prior interaction between the grandparent and each parent of the child;

(4) the present relationship between the grandparent and each parent of the child;

(5) time-sharing or visitation arrangements that were in place prior to filing of the petition;

(6) the effect the visitation with the grandparent will have on the child;

(7) if the grandparent has any prior convictions for physical, emotional or sexual abuse or neglect; and

(8) if the grandparent has previously been a full-time caretaker for the child for a significant period.

H. The district court may order mediation and evaluation in any matter when a grandparent's visitation privileges with respect to a minor child are at issue. When a judicial district has established a domestic relations mediation program pursuant to the provisions of the Domestic Relations Mediation Act, the mediation shall conform with the provisions of that act. Upon motion and hearing, the district court shall act promptly on the recommendations set forth in a mediation report and consider assessment of mediation and evaluation to the parties. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

I. When the district court decides that visitation is not in the best interest of the child, the court may issue an order requiring other reasonable contact between the grandparent and the child, including regular communication by telephone, mail or any other reasonable means.

J. The provisions of the Child Custody Jurisdiction Act and Section 30-4-4 NMSA 1978, regarding custodial interference, are applicable to the provisions of the Grandparent's Visitation Privileges Act."

Chapter 73 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 174

CHAPTER 74

RELATING TO MUNICIPAL TRANSIT; ALLOWING A MUNICIPALITY TO PROVIDE SERVICE OUTSIDE ITS COUNTY WITHOUT PRIOR APPROVAL.

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

Chapter 74 Section 1

Section 1. Section 3-52-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-53-5) is amended to read:

"3-52-5. TRANSPORTATION CONTRACTS.--All contracts for work, material or labor in connection with a transportation system shall be let in the manner provided by law for the letting of other contracts by the municipality.

SENATE BILL 195

CHAPTER 75

RELATING TO INSURANCE; AMENDING A SECTION OF THE NMSA 1978 TO CHANGE PROVISIONS FOR DELINQUENCY CHARGES ON PREMIUM FINANCE AGREEMENT INSTALLMENT PAYMENTS.

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

Chapter 75 Section 1

Section 1. Section 59A-45-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 841) is amended to read:

"59A-45-10. DELINQUENCY CHARGES.--A premium finance agreement may provide for the payment by the insured of a delinquency charge on each installment in default for a period of more than ten days and in an amount not to exceed five percent of each installment, or five dollars ($5.00), whichever is less, or in lieu thereof, interest after maturity of each such installment not to exceed the highest lawful contract rate; except that with respect to agreements financing coverages for other than personal, family or household purposes, the delinquency charge shall be an amount equal to five percent

of the unpaid installment, but in no event more than five hundred dollars ($500). In addition, such contract may provide for the payment of an attorney's reasonable fee, where it is referred for collection to an attorney not a salaried employee of the person to whom the installment payment is due, and for court costs and disbursements."

SENATE BILL 215, AS AMENDED

CHAPTER 76

RELATING TO DRIVER'S LICENSES AND IDENTIFICATION CARDS; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 76 Section 1

Section 1. Section 66-5-20 NMSA 1978 (being Laws 1978, Chapter 35, Section 242) is amended to read:

"66-5-20. REPLACEMENT LICENSES.--In the event that a permit or driver's license issued under the provisions of this article is lost, stolen, mutilated or destroyed, or in the event of a name or address change, the person to whom the permit or driver's license was issued may, upon payment of the required fee, obtain a replacement upon furnishing proof of age and identity satisfactory to the department. A person who loses a permit or driver's license and who, after obtaining a replacement, finds the original, shall immediately surrender the original to the department."

Chapter 76 Section 2

Section 2. Section 66-5-47 NMSA 1978 (being Laws 1978, Chapter 35, Section 269, as amended) is amended to read:

"66-5-47. PHOTOGRAPHS--EVIDENCE OF APPLICANT'S AGE.--

A. The department shall reproduce the likeness of drivers, subject to the following conditions:

(1) photographs or other reproductions of the likeness of all persons shall show a full face or front view; and

(2) photographs or other reproductions of the likeness of all persons under the age of twenty-one years shall have a printed legend, indicating that the person is under twenty-one, which shall be displayed in such manner as to be easily read by any person inspecting the license.

B. Each applicant for an initial license or a replacement license shall produce evidence of the applicant's age. Proof of an applicant's age shall be a birth certificate, certified copy of a birth certificate, a church record purporting to show the date of birth and baptism, an acknowledged copy of the church record, a valid passport or other evidence which the secretary deems sufficient. The date of birth shown on any driver's license or any instruction permit issued by the department shall coincide with the date of birth shown on the proof of applicant's age."

Chapter 76 Section 3

Section 3. Section 66-5-401 NMSA 1978 (being Laws 1978, Chapter 35, Section 328, as amended) is amended to read:

"66-5-401. IDENTIFICATION CARDS.--Any person who does not have a valid New Mexico driver's license may be issued an identification card by the department certified by the applicant as to true name, correct age and other identifying data as the department may require. Every application for an identification card shall be signed by the applicant or the applicant's parent or guardian. The secretary may, for good cause, revoke or deny the issuance of an identification card."

Chapter 76 Section 4

Section 4. Section 66-5-402 NMSA 1978 (being Laws 1978, Chapter 35, Section 329, as amended) is amended to read:

"66-5-402. PERSONS ELIGIBLE FOR IDENTIFICATION CARDS.--The department shall issue an identification card only to:

A. a person who is a New Mexico resident and who does not have a valid New Mexico driver's license and only upon the furnishing of a birth certificate or its certified copy, a certificate of baptism, a valid passport or other evidence that the department deems sufficient as documentary evidence of the age and identity of the person; or

B. a person over age sixty-five who is a New Mexico resident and who is surrendering a valid New Mexico driver's license, which license shall be sufficient documentary evidence of the age and identity of the person."

Chapter 76 Section 5

Section 5. Section 66-5-404 NMSA 1978 (being Laws 1978, Chapter 35, Section 331) is amended to read:

"66-5-404. DUPLICATE CARDS.--In the event an identification card issued pursuant to Section 66-5-402 NMSA 1978 is lost, stolen, destroyed or mutilated or a name or address is changed, the person to whom the identification card was issued may obtain a replacement upon furnishing satisfactory proof of age and identity to the department

and paying the required fee. Any person who loses an identification card and who after obtaining a replacement finds the original card shall immediately surrender the original card to the department. The same documentary evidence shall be furnished for a replacement as for an original identification card."

Chapter 76 Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 282, AS AMENDED

CHAPTER 77

RELATING TO CHILDREN; CLARIFYING PROCEDURES FOR THE PLACEMENT OF CHILDREN ALLEGED TO BE ABUSED OR NEGLECTED; AMENDING SECTIONS OF THE CHILDREN'S CODE.

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

Chapter 77 Section 1

Section 1. Section 32A-1-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 12) is amended to read:

"32A-1-3. PURPOSE OF ACT.--The Children's Code shall be interpreted and construed to effectuate the following legislative purposes:

A. first to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code and then to preserve the unity of the family whenever possible. The child's health and safety shall be the paramount concern. Permanent separation of the child from the family, however, would especially be considered when the child or another child of the parent has suffered permanent or severe injury or repeated abuse. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit;

B. to provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

C. to provide a continuum of services for children and their families, from prevention to treatment, considering whenever possible prevention, diversion and early intervention, particularly in the schools;

D. to provide children with services that are sensitive to their cultural needs;

E. to provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of the child victim; and

F. to provide continuity for children and families appearing before the children's court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family."

Chapter 77 Section 2

Section 2. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

A. "adult" means an individual who is eighteen years of age or older;

B. "child" means an individual who is less than eighteen years old;

C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;

D. "court appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules and Forms, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;

E. "custodian" means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including any employee of a residential facility or any persons providing out-of-home care;

F. "department" means the children, youth and families department, unless otherwise specified;

G. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

H. "guardian" means the person having the duty and authority of guardianship;

I. "guardianship" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about the child's general welfare and includes:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States or to major medical, psychiatric and surgical treatment;

(2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

(3) the authority and duty of reasonable visitation of the child;

(4) the rights and responsibilities of legal custody when the physical custody of the child is exercised by the child's parents, except when legal custody has been vested in another person; and

(5) when the rights of the child's parents have been terminated as provided for in the laws governing termination of parental rights or when both of the child's parents are deceased, the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could have made;

J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

K. "Indian child" means an unmarried person who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe;

L. "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

M. "judge", when used without further qualification, means the judge of the court;

N. "legal custody" means a legal status created by the order of the court or other court of competent jurisdiction that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and

discipline the child and to provide the child with food, shelter, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities. An individual granted legal custody of a child shall exercise the rights and responsibilities as custodian personally, unless otherwise authorized by the court entering the order;

O. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child. A parent retains all of the duties and authority of guardianship and legal custody of the child, unless otherwise limited or altered by court order;

P. "permanency plan" means a determination by the court that the child's interest will be served best by:

(1) return to the parent;

(2) placement with a person who will be the child's permanent guardian;

(3) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(4) placement in the custody of the department until the child reaches the age of majority, unless the child is emancipated, pursuant to the Emancipation of Minors Act; or

(5) placement in the custody of the department under a planned permanent living arrangement that meets the department's definition of long-term foster care;

Q. "person" means an individual or any other form of entity recognized by law;

R. "preadoptive parent" means a person with whom a child has been placed for adoption;

S. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

T. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

U. "tribunal" means any judicial forum other than the court."

Chapter 77 Section 3

Section 3. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. "abused child" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "aggravated circumstances" include those circumstances in which the parent, guardian or custodian has:

(1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or

(4) had his parental rights over a sibling of the child terminated involuntarily;

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

E. "neglected child" means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

F. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

G. "sexual abuse" includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law; and

H. "sexual exploitation" includes but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law."

Chapter 77 Section 4

Section 4. Section 32A-4-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 101) is amended to read:

"32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

(2) deliver the child to the department or to an appropriate shelter-care facility or, in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a shelter-care facility or a medical facility, the officer shall immediately notify the department that the child has been placed in the department's custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to an appropriate shelter-care facility or medical facility, a department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

D. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within two days from the date that the child was taken into custody."

Chapter 77 Section 5

Section 5. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused has been taken into custody by the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

B. The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.

C. At the custody hearing, the court shall release the child to his parent, guardian or custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness or injury, and the parent, guardian or custodian is not providing adequate care for the child;

(2) the child is in immediate danger from his surroundings and removal from those surroundings is necessary for the child's safety or well-being;

(3) the child will be subject to injury by others if not placed in the custody of the department;

(4) there has been an abandonment of the child by his parent, guardian or custodian; or

(5) the parent, guardian or custodian is not able or willing to provide adequate supervision and care for the child.

D. At the conclusion of the custody hearing, if the court determines that custody pending adjudication is appropriate, the court may:

(1) return the child to his parent, guardian or custodian upon such conditions as will reasonably assure the safety and well-being of the child; or

(2) award custody of the child to the department with or without provision for visitation rights for the parent, guardian or custodian of the child.

Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety.

E. At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

F. The Rules of Evidence shall not apply to custody hearings."

Chapter 77 Section 6

Section 6. Section 32A-4-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 114, as amended) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS-- DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. The foster parent, preadoptive parent or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the

maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.

E. If the court finds that it is in the best interest of the child, the child may be excluded from a neglect or an abuse hearing. Under the same conditions, a child may be excluded by the court during a hearing on dispositional issues.

F. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of this section are guilty of a petty misdemeanor.

G. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of neglect or abuse shall make and record its findings on whether the child is a neglected child, an abused child or both. If the petition alleges that the parent, guardian or custodian has subjected the child to aggravated circumstances, then the court shall also make and record its findings on whether the aggravated circumstances have been proven.

H. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the child is neglected or abused, the court shall dismiss the petition and may refer the family to the department for appropriate services.

I. In that part of the hearings held under the Children's Code on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

J. On the court's motion or that of a party, the court may continue the hearing on the petition for a period not to exceed thirty days to receive reports and other evidence in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for legal custody."

Chapter 77 Section 7

Section 7. Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116, as amended) is amended to read:

"32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED CHILD.--

A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be commenced within thirty days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with his parent, siblings and any other person who may significantly affect the child's best interest;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parent, guardian or custodian as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the treatment plan prepared as a part of the predisposition study in accordance with the provisions of Section 32A-4-21 NMSA 1978;

(8) the ability of the parent to care for the child in the home so that no harm will result to the child;

(9) whether reasonable efforts were used by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were used to attempt reunification of the child with the natural parent; and

(10) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's treatment plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(1) permit the child to remain with his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;

(2) place the child under protective supervision of the department; or

(3) transfer legal custody of the child to any of the following:

(a) the noncustodial parent, if it is found to be in the child's best interest;

(b) an agency responsible for the care of neglected or abused children; or

(c) a child-placement agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The court may determine that reasonable efforts are not required to be made when the court finds that:

(1) the efforts would be futile;

(2) the parent, guardian or custodian has subjected the child to aggravated circumstances; or

(3) the parental rights of the parent to a sibling of the child have been terminated involuntarily.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

H. Prior to any child being placed in the custody or protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, the department shall pursue the enrollment on the child's behalf.

J. When the court determines pursuant to Subsection C of this section that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to implement and finalize the permanency plan in a timely manner."

Chapter 77 Section 8

Section 8. Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119, as amended) is amended to read:

"32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. The initial judicial review shall be held within sixty days of the disposition. At the initial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to assure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. A representative of the local substitute care review board shall be permitted to attend and comment to the court.

B. Subsequent periodic reviews of dispositional orders shall be held within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. Prior to the review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. Prior to any judicial review by the court pursuant to this section, the local substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master appointed by the court; provided, however, that the court approve any findings made by the special master.

C. The children's court attorney shall give notice to all parties, the child's guardian ad litem, the child's CASA, a contractor administering the local substitute care review board

and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A or B of this section.

D. At any judicial review hearing held pursuant to Subsection B of this section, the department, the child's guardian ad litem and all parties given notice under Subsection C of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

E. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

F. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

G. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this section, the court shall order one of the following dispositions:

(1) dismiss the action and return the child to his parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

(2) permit the child to remain with his parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(3) return the child to his parent and place the child under the protective supervision of the department;

(4) transfer or continue legal custody of the child to:

(a) the noncustodial parent, if that is found to be in the child's best interests;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or

(c) the department, subject to the provisions of Paragraph (6) of this subsection;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety unless the court finds that such efforts are not required. The court may determine that reasonable efforts are not required to be made when the court finds that:

(a) the efforts would be futile;

(b) the parent, guardian or custodian has subjected the child to aggravated circumstances; or

(c) the parental rights of the parent to a sibling of the child have been terminated involuntarily;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or

(7) if during a judicial review the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order:

(a) the child's parent, guardian or custodian to show cause why he should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

I. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

J. The report of the local substitute care review board submitted to the court pursuant to Subsection B of this section shall become a part of the child's permanent court record.

K. When the court determines, pursuant to Paragraph (5) of Subsection H of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to place the child in a timely manner in

accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

Chapter 77 Section 9

Section 9. Section 32A-4-27 NMSA 1978 (being Laws 1993, Chapter 77, Section 121) is amended to read:

"32A-4-27. INTERVENTION--PERSONS PERMITTED TO INTERVENE.--

A. At any stage of an abuse or neglect proceeding, a person described in this subsection may be permitted to intervene as a party with a motion for affirmative relief:

(1) a foster parent whom the child has resided with for at least six months;

(2) a relative within the fifth degree of consanguinity with whom the child has resided;

(3) a stepparent with whom the child has resided; or

(4) a person who wishes to become the child's permanent guardian.

B. When determining whether a person described in Subsection A of this section should be permitted to intervene, the court shall consider:

(1) the person's rationale for the purposed intervention; and

(2) whether intervention is in the best interest of the child.

C. When the court determines that the child's best interest will be served as a result of intervention by a person described in Subsection A of this section, the court may permit intervention unless the party opposing intervention can demonstrate that a viable plan for reunification with the respondents is in progress and that intervention could impede the progress of the reunification plan.

D. The persons described in this subsection shall be permitted to intervene during any stage of an abuse or neglect proceeding:

(1) a parent of the child who is not named in the petition alleging abuse or neglect; and

(2) when the child is an Indian child, the child's Indian tribe.

E. The child's foster parent shall be permitted to intervene when:

(1) the foster parent desires to adopt the child;

(2) the child has resided with the foster parent for at least six months within the year prior to the termination of parental rights;

(3) a motion for termination of parental rights has been filed by a person other than the foster parent; and

(4) bonding between the child and the child's foster parent is alleged as a reason for terminating parental rights in the motion for termination of parental rights.

F. The foster parent, preadoptive parent or relative providing care for the child shall be given notice of, and an opportunity to be heard in, any review or hearing with respect to the child, except that this subsection shall not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to such a review or hearing solely on the basis of the notice and opportunity to be heard."

Chapter 77 Section 10

Section 10. Section 32A-4-28 NMSA 1978 (being Laws 1993, Chapter 77, Section 122, as amended) is amended to read:

"32A-4-28. TERMINATION OF PARENTAL RIGHTS--ADOPTION DECREE.--

A. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being adopted if parental rights are terminated.

B. The court shall terminate parental rights with respect to a child when:

(1) there has been an abandonment of the child by his parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child. The court may find in some cases that efforts by the department or another agency are unnecessary, when:

(a) there is a clear showing that the efforts would be futile;

(b) the parent has subjected the child to aggravated circumstances; or

(c) the parental rights of the parent to a sibling of the child have been terminated involuntarily; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent;

(e) the substitute family desires to adopt the child; and

(f) a presumption of abandonment created by the conditions described in Subparagraphs (a) through (e) of this paragraph has not been rebutted.

C. A finding by the court that all of the conditions set forth in Subparagraphs (a) through (f) of Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 shall comply with the requirements of that act.

E. If the court finds that parental rights should be terminated; that the requirements for the adoption of a child have been satisfied; that the prospective adoptive parent is a party to the action; and that good cause exists to waive the filing of a separate petition for adoption, the court may proceed to grant adoption of the child, absent an appeal of the termination of parental rights. The court shall not waive any time requirements set forth in the Adoption Act unless the termination of parental rights occurred pursuant to the provisions of Paragraph (3) of Subsection B of this section. The court may enter a decree of adoption only after finding that the party seeking to adopt the child has satisfied all of the requirements set forth in the Adoption Act. Unless otherwise stipulated by all parties, an adoption decree shall take effect sixty days after the termination of parental rights, to allow the department sufficient time to provide counseling for the child and otherwise prepare the child for the adoption. The adoption decree shall conform to the requirements of the Adoption Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree."

Chapter 77 Section 11

Section 11. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) is amended to read:

"32A-4-29. TERMINATION PROCEDURE.--

A. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding. The proceeding may be initiated by any of the following:

(1) the department;

(2) a licensed child placement agency; or

(3) any other person having a legitimate interest in the matter, including the child's guardian ad litem, a petitioner for adoption, a foster parent or a relative of the child.

B. The motion for termination of parental rights shall be signed, verified by the moving party and filed with the court. The motion shall set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the persons or authorized agency or agency officer to whom custody might be transferred;

(4) whether the child resides or has resided with a foster parent who desires to adopt this child;

(5) whether the motion is in contemplation of adoption;

(6) the relationship or legitimate interest of the moving party to the child; and

(7) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. A parent who has not previously been a party to the proceeding shall be named in the motion and shall become a party to the proceeding unless the court determines that the parent has not established a protected liberty interest in his relationship with the child.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on all other parties, the foster parent, preadoptive parent or relative providing care for the child with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of motions in a civil action in this state, except that foster parents and attorneys of record in this proceeding shall be served by certified mail. The notice shall state specifically that the person served shall file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail to the tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6). Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

E. If the identity or whereabouts of a person entitled to service are unknown, the moving party shall file a motion for an order granting service by publication supported by the affidavit of the moving party or his agent or attorney detailing the efforts made to locate the person entitled to service. Upon being satisfied that reasonable efforts to locate the person entitled to service have been made and that information as to the identity or whereabouts of the person is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall order service by publication pursuant to the Rules of Civil Procedure for the District Courts.

F. After a motion for the termination of parental rights is filed, the parent shall be advised of the right to counsel unless the parent is already represented by counsel. Counsel shall be appointed, upon request, for any parent who is unable to obtain counsel due to financial reasons or, if in the court's discretion, the interests of justice require appointment of counsel.

G. The court shall assure that a guardian ad litem represents the child in all proceedings for the termination of parental rights.

H. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date shall be at least thirty days, but no more than sixty days, after service is effected upon the parties entitled to service under this section.

I. In any action for the termination of parental rights brought by a party other than the department and involving a child in the custody of the department, the department may:

(1) litigate a motion for the termination of parental rights that was initially filed by another party; or

(2) move that the motion for the termination of parental rights be found premature and denied.

J. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in 25 U.S.C. Section 1912(f).

K. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

L. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.

M. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A judgment of the court terminating parental rights shall not affect the child's rights of inheritance from and through the child's biological parents."

Chapter 77 Section 12

Section 12. Section 32A-4-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 126) is amended to read:

"32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

A. A motion for permanent guardianship may be filed by any party.

B. Any application for permanent guardianship shall be signed and verified by the petitioner, filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the facts and circumstances supporting the ground for permanent guardianship;

(3) the name and address of the prospective guardian and a statement that the person agrees to accept the duties and responsibilities of guardianship;

(4) the basis for the court's jurisdiction;

(5) the relationship of the child to the petitioner and the prospective guardian; and

(6) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the petitioner to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. If the petition is not filed by the prospective guardian, the petition shall be verified by the prospective guardian.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, the foster parent, preadoptive parent or relative providing care for the child with whom the child has resided for six months, the child's custodian, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of motions in a civil action in this state. The notice shall state specifically that the person served shall file a written response to the application within twenty days if the person intends to contest the guardianship.

E. When the child is an Indian child, subject to the federal Indian Child Welfare Act of 1978, notice shall also be served upon the Indian tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).

F. The grounds for permanent guardianship shall be proved by clear and convincing evidence. The grounds for permanent guardianship shall be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978.

G. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

H. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well being.

I. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

J. Any party to the abuse or neglect proceeding, the child or a parent of the child may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances including:

(1) the child's parent is able and willing to properly care for the child; or

(2) the child's guardian is unable to properly care for the child.

K. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship.

L. The court may revoke the order granting guardianship when a change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship."

Chapter 77 Section 13

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 407, AS AMENDED

CHAPTER 78

RELATING TO CHILDREN; CLARIFYING THAT INDIAN CHILDREN HAVE THE SAME RIGHT TO SERVICES THAT ARE AVAILABLE TO OTHER CHILDREN IN THE STATE; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 78 Section 1

Section 1. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT JURISDICTION.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child;

(2) a child of a family in need of services;

(3) a neglected child;

(4) an abused child;

(5) a child subject to adoption; or

(6) a child subject to placement for a developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction to emancipate a minor.

C. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Child Custody Jurisdiction Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings.

D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the federal Indian Child Welfare Act of 1978.

E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child."

Chapter 78 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 429, AS AMENDED

CHAPTER 79

RELATING TO PROBATE; CLARIFYING WHO IS ENTITLED TO A PERSONAL PROPERTY ALLOWANCE.

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

Chapter 79 Section 1

Section 1. 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 family 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."

SENATE BILL 435, AS AMENDED

CHAPTER 80

RELATING TO COURTS; EXTENDING THE PERIOD OF TIME FOR A PARTY TO FILE AN APPLICATION FOR AN INTERLOCUTORY APPEAL; REMOVING THE DEADLINE FOR COURT ACTION ON APPLICATION FOR AN INTERLOCUTORY APPEAL; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 80 Section 1

Section 1. Section 39-3-4 NMSA 1978 (being Laws 1971, Chapter 40, Section 1) is amended to read:

"39-3-4. INTERLOCUTORY ORDER APPEALS FROM DISTRICT COURT.--

A. In any civil action or special statutory proceeding in the district court, when the district judge makes an interlocutory order or decision which does not practically dispose of the merits of the action and he believes the order or decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order or decision may materially advance the ultimate termination of the litigation, he shall so state in writing in the order or decision.

B. The supreme court or court of appeals has jurisdiction over an appeal from such an interlocutory order or decision, as appellate jurisdiction may be vested in those courts. Within fifteen days after entry of the order or decision, any party aggrieved may file with the clerk of the supreme court or court of appeals an application for an order allowing an appeal, accompanied by a copy of the interlocutory order or decision.

C. Application under this section for an order allowing appeal does not stay proceedings in the district court unless so ordered by the district judge or a judge or justice of the court to which application is made."

Chapter 80 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 437

CHAPTER 81

RELATING TO GAME AND FISH; AMENDING A SECTION OF THE NMSA 1978 TO AUTHORIZE AN ADDITIONAL BIGHORN SHEEP ENHANCEMENT PERMIT.

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

Chapter 81 Section 1

Section 1. Section 17-3-16.1 NMSA 1978 (being Laws 1989, Chapter 384, Section 1) is amended to read:

"17-3-16.1. BIGHORN SHEEP ENHANCEMENT PERMITS--ISSUANCE--USE.--

A. The state game commission shall direct the department of game and fish to authorize not more than two of the permits available for issuance in the license year for the taking of two bighorn rams for the purpose of raising funds for programs and projects to benefit bighorn sheep.

B. The state game commission shall prescribe by regulation the form, design and manner of issuance of the bighorn sheep enhancement permits. The issuance of one

permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the bighorn sheep enhancement permits shall be credited to the game protection fund to be used exclusively for bighorn sheep preservation, restoration and management."

SENATE BILL 482, AS AMENDED

CHAPTER 82

RELATING TO PUBLIC HEALTH; AMENDING THE GENETIC INFORMATION PRIVACY ACT; CORRECTING APPLICABILITY OF CERTAIN PROVISIONS OF THE ACT.

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

Chapter 82 Section 1

Section 1. Section 24-21-7 NMSA 1978 (being Laws 1998, Chapter 77, Section 7) is amended to read:

"24-21-7. APPLICATION OF ACT.--The provisions of the Genetic Information Privacy Act shall apply to genetic analysis performed and genetic information and gene products obtained after May 20, 1998, except that Section 24-21-4 NMSA 1978 and proceedings brought alleging violations of that section shall apply to genetic analysis whenever performed and genetic information and gene products whenever obtained."

SENATE BILL 570, AS AMENDED

CHAPTER 83

RELATING TO FINANCIAL INSTITUTIONS; PROVIDING FOR PUBLIC ASSISTANCE BENEFIT ACCOUNTS IN THE REMOTE FINANCIAL SERVICE UNIT ACT; AMENDING A SECTION OF THE REMOTE FINANCIAL SERVICE UNIT ACT.

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

Chapter 83 Section 1

Section 1. Section 58-16-3 NMSA 1978 (being Laws 1990, Chapter 123, Section 3, as amended) is amended to read:

"58-16-3. DEFINITIONS.--

A. As used in the Remote Financial Service Unit Act:

(1) "account" means an account maintained by a cardholder or merchant with a financial institution or with a state agency, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW) share, share draft, public assistance benefit or other consumer or asset accounts or pre-authorized credit card accounts;

(2) "account transfer" means a transaction that enables movement of funds by a cardholder from one account to another account within the same financial institution;

(3) "acquirer" means the intercept processor that acquires financial data relating to a transaction from a card acceptor or a merchant and puts the data into a network system and means "agent acquirer" unless specifically indicated otherwise;

(4) "agent acquirer" means any financial institution acting as an authorized agent of the acquirer in enabling financial data relating to a POS transaction to be acquired by the acquirer from a card acceptor or merchant and means "acquirer" unless specifically indicated otherwise;

(5) "ATM transaction" means any one or more of the following transactions undertaken at an automated teller machine (ATM):

(a) a cash advance from an account;

(b) a cash advance from an authorized line of credit;

(c) a deposit to an account;

(d) a balance inquiry;

(e) an account transfer; and

(f) a normal financial transaction for a cardholder involving the issuance of non-cash or cash-equivalent items; provided, however, that normal financial transactions at an ATM will expressly exclude any POS transaction;

(6) "authorization" means the issuance of approval, by or on behalf of the financial institution holding the cardholder's account, to complete a transaction initiated or authorized by the cardholder;

(7) "automated teller machine" or "ATM" means an unmanned device that is activated by the cardholder through a specially prepared card or by the transmission of a code via a keyboard or keyset or both and is capable of one or more of the following transactions:

(a) dispensing cash to any cardholder from an account or against a preauthorized line of credit;

(b) accepting deposits;

(c) account transfers;

(d) satisfying a balance inquiry in the cardholder's account or accounts; and

(e) conducting normal financial transactions involving the issuance of non-cash or cash-equivalent items; provided, however, that normal financial transactions at an ATM will expressly exclude a transaction that can only be initiated and completed at a POS terminal;

(8) "balance inquiry" means a transaction that permits a cardholder to obtain the current balance of the cardholder's account or accounts;

(9) "card" means a plastic card or other instrument or any other access device issued by a financial institution or by a state agency to a cardholder that enables the cardholder to have access to and that processes transactions against one or more accounts, and the term shall be used when referring either to an ATM access card, a debit card, a credit card identifying a cardholder who has established a pre-approved credit line with the issuer of the credit card or an EBT card issued to a recipient of public assistance benefits;

(10) "card acceptor" means the party accepting the card and presenting transaction data to an acquirer;

(11) "cardholder" means a person to whom a card has been issued by a financial institution or who is authorized to use the card;

(12) "cash advance" means any transaction resulting in a cardholder receiving cash, whether initiated through an ATM or a POS terminal;

(13) "chargeback" means the credit of all or a portion of an amount previously posted to a cardholder's account;

(14) "clearing account" means an account or several accounts maintained for the purpose of settlement and payment of fees to the network manager;

(15) "credit" means a claim for funds by the cardholder for the credit of the cardholder's account and provides details of funds acknowledged as payable by the acquirer or card acceptor to the issuer for credit to the cardholder's account;

(16) "credit card cash advance" means a cash loan obtained by a cardholder against a pre-authorized line of credit through presentation of a card;

(17) "data interchange" means the exchange of transaction data, authorization requests, transaction records or other data between intercept processors and acquirers and issuers through a shared system or network;

(18) "debit" means a transaction initiated by a cardholder that results in the debit to the cardholder's account, through use of a card or otherwise, and results in a claim for funds made by the acquirer or card acceptor against the issuer;

(19) "director" means the director of the financial institutions division of the regulation and licensing department;

(20) "electronic benefit transfer" or "EBT" means a system administered by a state agency designed to provide a public assistance benefit or other benefit of money value provided by a state agency through POS terminals;

(21) "electronic benefit transfer card" or "EBT card" means a plastic card or any other access device issued by a state agency to a cardholder that enables the cardholder to have access to and process transactions against one or more public assistance benefit accounts or other benefit accounts;

(22) "electronic funds transfer" or "EFT" means a system designed to facilitate the exchange of monetary value via electronic media utilizing electronic or mechanical signals or impulses or a combination of electronic or mechanical impulses and audio, radio or microwave transmissions;

(23) "financial institution" means an insured state or national bank, a state or federal savings and loan association or savings bank, a state or federal credit union or authorized branches of each of the foregoing;

(24) "in-state financial institution" means a financial institution authorized to engage in and engaged in business in New Mexico and having its main office or a staffed branch within the state;

(25) "intercept processor" means any electronic data processor operating for a financial institution that passes transactions;

(26) "issuer" means a financial institution that issues cards or accepts transactions for a card, is the acceptor of a transaction and is typically, but not always, the entity that maintains the account relationship with the cardholder;

(27) "lobby ATM" or "teller-line ATM" means any ATM located within the lobby of a financial institution or in its teller line, access to which is available only during regular banking hours;

(28) "merchant" means a seller of goods or services, retailer or other person who, pursuant to an agreement with a financial institution, agrees to accept or causes its outlets to accept cards for EFT transactions when properly presented, is usually a card acceptor and is a seller of goods and services who is regularly and principally engaged in the business of selling, leasing or renting goods, selling or leasing services for any purpose or selling insurance, whether the business is a wholesale or retail business and whether the goods or services are for business, agricultural, personal, family or household purposes. "Merchant" includes a professional licensed by the state of New Mexico, but does not include financial institutions;

(29) "modem" is a contraction of "modulator-demodulator" and means a functional unit that enables digital data to be transmitted over analog transmission facilities such as telephone lines, radio or microwave transmissions;

(30) "network" means a computer-operated system of transmitting items and messages between ATM or POS terminals, intercept processor and financial institutions, and settling transactions between financial institutions, and includes without limitation, ATMs, POS terminals, all related computer hardware and software, modems, logos and service marks;

(31) "network manager" means the person managing the business of a network;

(32) "off-line" means not on-line;

(33) "off-premises ATM" means ATMs installed away from the building or lobby of a financial institution by a distance of not less than five hundred feet;

(34) "on-line" means a system in which all input data enters the computer at a financial institution, an intercept processor or the network from its point of origin and that is capable of transmitting information back to the point of origin after all input data is processed and requires a personal identification number;

(35) "on-premises ATM" means an ATM that stands in or immediately adjacent to the financial institution's building, such as in the financial institution's lobby, through the wall or a drive-up ATM within five hundred feet of the financial institution's building;

(36) "person" means an individual, partnership, joint venture, corporation or other legal entity however organized;

(37) "personal identification number" or "PIN" means a series of numbers or letters selected for or by the cardholder and used by the cardholder as a code or password in conjunction with a card to perform a transaction;

(38) "point-of-sale terminal" or "POS terminal" means an information processing device or machine, located upon the premises occupied by one or more merchants, through

which transaction messages are initiated and electronically transmitted to an acquirer to effectuate a POS transaction and that accepts debit cards, credit cards and EBT cards;

(39) "POS transaction" means any of the following transactions undertaken at a POS terminal:

(a) purchases;

(b) purchases that include cash back to the cardholder;

(c) cash advances at POS terminals;

(d) returned item transaction message resulting in a credit to the cardholder's account;

(e) a credit;

(f) an authorization;

(g) chargebacks at POS terminals;

(h) card verification whereby the validity of a card is determined at POS terminals;

(i) balance inquiries at POS terminals; and

(j) force post financial advice at POS terminals whereby any other transaction authorized by an issuer-approved stand-in processor requires settlement resulting in a debit to the cardholder's account.

Nothing in this paragraph shall be construed to include credit card transactions;

(40) "public assistance benefit" means a benefit of monetary value available from various state and federal public benefit programs administered through or enforced by a state agency;

(41) "purchase" means a transaction that, if approved, results in a debit transaction for the payment of goods and services or may include cash paid to the cardholder of some part of the amount of the transaction;

(42) "receipt" means a hard-copy description of a transaction:

(a) for the purposes of the Remote Financial Service Unit Act, if the transaction is an ATM transaction, the receipt shall contain, at a minimum: 1) the date of the ATM transaction; 2) the amount of the ATM transaction, if any; 3) the account number; 4) the type of account accessed; 5) the location of the ATM used in the ATM transaction; 6) the identity of any party or account to which funds are transferred; and 7) the type of ATM transaction completed; and

(b) for the purposes of the Remote Financial Service Unit Act, if the transaction is a POS transaction, the receipt shall contain, at a minimum: 1) the date of the POS transaction; 2) the amount of the POS transaction, if any; 3) the account number; 4) the type of account accessed; 5) the merchant's name and location; and 6) the type of POS transaction completed;

(43) "remote financial service unit" means a POS terminal or an ATM;

(44) "returned item transaction message" means a credit message generated by the acquirer or by the merchant that returns the value of the returned item to the cardholder's account;

(45) "settlement" means the process by which funds are transferred between financial institutions, intercept processors or networks in the flow of a transaction or in the payment of fees associated with the transaction;

(46) "shared ATM or POS terminals" means ATM or POS terminals that are shared among financial institutions by formal agreement for the purposes of cardholder convenience, reduction of capital investment and marketing advantage;

(47) "single subscriber terminal" means any terminal or set of terminals used to connect a single customer of a financial institution to his financial institution through which EFT messages are sent and completed, other than transactions;

(48) "switch" means a routing mechanism and any device attached thereto that is necessary for the processing of a transaction used to communicate information and transactions among participating financial institutions or their intercept processors in a shared system or network;

(49) "transaction" means a collection of electronic messages concluded by:

(a) a debit to or a credit from an account;

(b) a balance inquiry;

(c) the consummation of a normal financial transaction; or

(d) a rejected attempt of any one of those matters provided in Subparagraphs (a) through (c) of this paragraph;

(50) "unauthorized use of the card of another" means the utilization of the card in or through a remote financial service unit to affect the balance of or obtain information concerning the account of the cardholder by a person other than the cardholder, which person does not have the permission of the cardholder for such use; and

(51) "unauthorized withdrawal from the account of another" means the debiting of or removal of funds from a cardholder's account, accomplished by means of the utilization of a remote financial service unit by a person other than the cardholder, which person does not have actual, implied or apparent authority for the debiting or removal and from which debiting or removal the cardholder receives no benefit.

B. Any of the information provided pursuant to Subparagraphs (a) and (b) of Paragraph (42) of Subsection A of this section may be provided using codes, numbers or other uniform explanations so long as they are explained elsewhere on the receipt.

C. No receipt shall be required in any transaction involving a negotiable instrument that will itself become a receipt.

D. Any term used in the Remote Financial Service Unit Act but not specifically defined shall have the meaning given to that term by the Uniform Commercial Code."

Chapter 83 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 54

CHAPTER 84

RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE TAX ADMINISTRATION ACT REGARDING DELINQUENT TAXPAYERS, CLAIMS FOR REFUND AND INTEREST ON OVERPAYMENTS.

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

Chapter 84 Section 1

Section 1. Section 7-1-16 NMSA 1978 (being Laws 1965, Chapter 248, Section 19, as amended) is amended to read:

"7-1-16. DELINQUENT TAXPAYER.--

A. Except as provided in Subsection D of this section, any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within thirty days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

(1) payment of the total amount of all such taxes is made;

(2) a retroactive extension of time to file a protest is granted pursuant to Section 7-1-24 NMSA 1978; provided, however, that the taxpayer again becomes a delinquent taxpayer if the assessment is not abated and the taxpayer does not pay, protest or furnish security within the time allowed by the retroactive extension of time;

(3) security is furnished for payment; or (4) no part of the assessment remains unabated.

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment.

D. If a taxpayer files for an extension of time to file a protest as provided in Section 7-1-24 NMSA 1978 within thirty days after the date of the assessment or demand for payment, the taxpayer does not become a delinquent taxpayer unless the assessment is not abated and the taxpayer does not pay, protest or furnish security within the time allowed by the extension of time."

Chapter 84 Section 2

Section 2. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. CLAIM FOR REFUND.--

A. Any person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections C, D and E of this section, a written claim for refund. Except as provided in Subsection H of this section, a refund claim shall include the taxpayer's name, address and identification number, the type of tax for which a refund is being claimed, the sum of money being claimed, the period for which overpayment was made and the basis for the refund.

B. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not granted in full, the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Paragraphs (1) and (2) of this subsection. If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the department may not approve or deny the claim but the person may refile it within the time limits set forth in Subsection C of this section or may within ninety days elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection. In any case, if a person does timely pursue more than one remedy, the person shall be deemed to have elected the first remedy invoked. The remedies are as follows:

(1) the person may direct to the secretary a written protest against the denial of, or failure to either allow or deny the claim, which shall be set for hearing by a hearing officer designated by the secretary promptly after the receipt of the protest in accordance with the provisions of Section 7-1-24 NMSA 1978, and pursue the remedies of appeal from decisions adverse to the protestant as provided in Section 7-1-25 NMSA 1978; or

(2) the person may commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, alleging that on account thereof the state is indebted to the plaintiff in the amount stated, together with any interest allowable, demanding the refund to the plaintiff of that amount and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

C. Except as otherwise provided in Subsections D and E of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

(1) within three years of the end of the calendar year in which:

(a) the payment was originally due, the payment was made or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act; or

(c) property was levied upon pursuant to the provisions of the Tax Administration Act;

(2) within one year of the date:

(a) of the denial of the claim for credit under the provisions of the Investment Credit Act or Filmmakers Credit Act;

(b) an assessment of tax is made; or

(c) a proceeding begun in court by the department with respect to any period that is covered by a waiver signed on or after July 1, 1993 by the taxpayer pursuant to Subsection F of Section 7-1-18 NMSA 1978; or

(3) for assessments made on or after July 1, 1993, within one year of the date of an assessment of tax made under Subsection B, C or D of Section 7-1-18 NMSA 1978 when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, but the claim for refund shall not be made with respect to any period not covered by the assessment.

D. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-14 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

E. If, as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date of the internal revenue service audit adjustment or payment of the federal refund or within the period limited by Subsection C of this section, whichever expires later. Interest computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on any such claim for refund from the date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

F. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

G. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide

pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act.

H. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns."

Chapter 84 Section 3

Section 3. Section 7-1-27 NMSA 1978 (being Laws 1965, Chapter 248, Section 29, as amended) is amended to read:

"7-1-27. CONCLUSIVENESS OF COURT ORDER ON LIABILITY FOR PAYMENT OF TAX.--Whenever the jurisdiction of the district court of Santa Fe county or the court of appeals is invoked according to the provisions of Section 7-1-25, 7-1-26 or 7-1-59 NMSA 1978, or whenever the jurisdiction of any federal court is invoked or whenever the jurisdiction of any district court of this state is invoked according to the provisions of Section 7-1-58 NMSA 1978, a final decision of that court or of any higher court which reviews the matter and from which decision no appeal or review is successfully taken is conclusive as regards the liability or nonliability of any person for payment of any tax."

Chapter 84 Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 119

CHAPTER 85

REPEALING THE DELAYED REPEAL OF A SECTION OF LAW PERTAINING TO THE DISPOSITION OF LOTTERY REVENUE.

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

Chapter 85 Section 1

Section 1. REPEAL.--Laws 1995, Chapter 155, Section 38 is repealed.

HOUSE BILL 258

CHAPTER 86

RELATING TO TAXATION; AMENDING A SECTION OF THE SEVERANCE TAX ACT RELATING TO THE COAL SURTAX EXEMPTION.

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

Chapter 86 Section 1

Section 1. Section 7-26-6.2 NMSA 1978 (being Laws 1990, Chapter 83, Section 1 and also Laws 1990, Chapter 84, Section 1, as amended) is amended to read:

"7-26-6.2. COAL SURTAX EXEMPTION--QUALIFICATION REQUIREMENTS.--

A. The following coal is exempt from the surtax imposed on coal under the provisions of Section 7-26-6 NMSA 1978:

(1) coal sold and delivered pursuant to coal sales contracts that are entered into on or after July 1, 1990, under which deliveries start after July 1, 1990, if the sales contracts are not the result of:

(a) a producer and purchaser mutually rescinding an existing contract and negotiating a revised contract under substantially similar terms and conditions;

(b) a purchaser establishing an affiliated company to purchase coal on behalf of the purchaser; or

(c) a purchaser independently abrogating a contract that was in effect on July 1, 1990 with a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in a calendar year after June 30, 2009 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that a person who is a party to the contract has taken an action to circumvent the intent and purpose of this section, the exemption shall be disallowed."

HOUSE BILL 536

CHAPTER 87

RELATING TO EMERGENCY MANAGEMENT; ENTERING INTO THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

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

Chapter 87 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Emergency Management Assistance Compact".

Chapter 87 Section 2

Section 2. COMPACT ENTERED INTO.--The Emergency Management Assistance Compact is enacted into law and entered into with all other jurisdictions legally joining therein in accordance with its terms, in a form substantially as follows:

"EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE 1 - PURPOSE AND AUTHORITIES

A. The Emergency Management Assistance Compact is made and entered into by and between the participating member states that enact that compact.

B. As used in the Emergency Management Assistance Compact:

(1) "party states" means the participating member states to the compact; and

(2) "state" means the several states, the Commonwealth of Puerto Rico, the District of Columbia and all United States territorial possessions.

C. The purpose of the Emergency Management Assistance Compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack.

D. The Emergency Management Assistance Compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance pursuant to that compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE 2 - GENERAL IMPLEMENTATION

A. Each party state entering into the Emergency Management Assistance Compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under that compact. Each state further recognizes that there will be emergencies that require immediate access and will present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

B. The prompt, full and effective use of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of the Emergency Management Assistance Compact shall be understood.

C. On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement the Emergency Management Assistance Compact.

ARTICLE 3 - PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack;

(2) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(3) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(4) assist in warning communities adjacent to or crossing the state boundaries;

(5) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical life-line equipment, services and resources, both human and material;

(6) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities delineated in this subsection.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) a description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services and search and rescue;

(2) the amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

(3) the specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE 4 - LIMITATIONS

A. Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by the Emergency Management Assistance Compact in accordance with the terms of the compact; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

B. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of the Emergency Management Assistance Compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving states, whichever is longer.

ARTICLE 5 - LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE 6 - LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to the Emergency Management Assistance Compact shall be considered agents of the

requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to that compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE 7 - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the party states, the Emergency Management Assistance Compact contains elements of a broad base common to all states, and nothing in that compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ARTICLE 8 - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to the Emergency Management Assistance Compact in the same manner and on the same terms as if the injury or death were sustained within its own state.

ARTICLE 9 - REIMBURSEMENT

Any party state rendering aid in another party state pursuant to the Emergency Management Assistance Compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article 8 of that compact shall not be reimbursable under this provision.

ARTICLE 10 - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the

emergency management directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees; the number of evacuees to be received in different areas; the manner in which food, clothing, housing, and medical care will be provided; the registration of the evacuees; the providing of facilities for the notification of relatives or friends; and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE 11 - IMPLEMENTATION

A. The Emergency Management Assistance Compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, the Emergency Management Assistance Compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from the Emergency Management Assistance Compact by enacting a statute repealing that compact, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of the Emergency Management Assistance Compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE 12 - VALIDITY

This section shall be construed to effectuate the purposes stated in Article 1 of the Emergency Management Assistance Compact. If any provision of that compact is declared unconstitutional, or its applicability to any person or circumstances is held invalid, the constitutionality of the remainder of the compact and its applicability to other persons and circumstances shall not be affected.

ARTICLE 13 - ADDITIONAL PROVISIONS

Nothing in the Emergency Management Assistance Compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

ARTICLE 14 - REPORTING TO THE LEGISLATURE

The secretary of public safety shall, by January, 2000, provide to the legislative finance committee copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The secretary shall annually thereafter provide the legislative finance committee with copies of all new or amended mutual aid plans and procedures by January of each calendar year."

Chapter 87 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 562

CHAPTER 88

RELATING TO THE SEVERANCE TAX PERMANENT FUND; PROVIDING BY LAW FOR ANNUAL DISTRIBUTIONS FROM THE SEVERANCE TAX PERMANENT FUND TO THE GENERAL FUND; CHANGING PROVISIONS FOR CERTAIN INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND; DECLARING AN EMERGENCY.

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

Chapter 88 Section 1

Section 1. SEVERANCE TAX PERMANENT FUND--ANNUAL DISTRIBUTIONS.--The secretary of finance and administration shall make annual distributions from the severance tax permanent fund in the amount authorized by and calculated pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico. One-twelfth of the amount authorized to be distributed in a fiscal year shall be distributed each month to the general fund.

Chapter 88 Section 2

Section 2. Section 7-27-5.4 NMSA 1978 (being Laws 1983, Chapter 306, Section 11, as amended) is amended to read:

"7-27-5.4. NEW MEXICO BUSINESS INVESTMENTS.--No more than twenty percent of the book value of the severance tax permanent fund may be invested in the following investments and in the following amounts:

A. no more than ten percent of the book value of the severance tax permanent fund may be invested in notes or obligations securing loans to New Mexico businesses made by farm credit entities, banks and savings and loan associations and mortgages approved by the department of housing and urban development pursuant to the act of congress of July 30, 1953 known as the Small Business Act of 1953, as amended, and notes or obligations pursuant to the act of congress of August 14, 1946 known as the Farmers' Home Administration Act of 1946, as amended, only to the extent that both principal and interest are guaranteed by the United States government. The effective yield of these loans shall be a market rate not less than the yield available on the planned amortized class tranche of collateralized mortgage obligations guaranteed by the federal national mortgage association or the federal home loan mortgage corporation with an average life comparable to the maturity of the loan. The state investment officer may enter into conventional agreements for the servicing of the loans and the administration of the receipts therefrom. Any servicing agreement may contain reasonable and customary provisions, including servicing fees not to exceed one hundred fifty basis points, as may be agreed upon; provided, in no event shall the rate paid by the borrower on the loan, together with servicing fees, exceed the maximum rate permitted by the applicable federal guarantee program; and

B. no more than ten percent of the book value of the fund may be invested in bonds, notes, debentures or other evidence of indebtedness, excluding commercial paper rated not less than Baa or BBB or the equivalent by a national rating service of any corporation organized and operating within the United States, excluding regulated public utility corporations, which as a condition of receiving the proceeds of such evidence of indebtedness will use such proceeds to establish or expand business outlets or ventures in New Mexico, provided that:

(1) the investment in the bonds, notes or debentures or other evidence of indebtedness of any one corporation shall not exceed one hundred percent of the cost of the expansion venture or new outlet or twenty million dollars ($20,000,000), whichever is less;

(2) the rate of interest to be paid on the bonds, notes or debentures or other evidence of indebtedness shall be established by the council, but shall not be less than the equivalent yield available on United States treasury issues of a comparable maturity plus one hundred basis points;

(3) the indebtedness shall be approved prior to purchase by the council; and

(4) the guidelines for initiation of the purchase by the council of the bonds, notes, debentures or other evidence of indebtedness and the terms thereof shall be established by the council."

Chapter 88 Section 3

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

HOUSE BILL 618

CHAPTER 89

RELATING TO PUBLIC SCHOOLS; DESIGNATING SPECIFIC REVENUES FOR PAYMENT OF LEASE-PURCHASE ARRANGEMENTS UNDER THE EDUCATION TECHNOLOGY EQUIPMENT ACT; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Chapter 89 Section 1

Section 1. Section 6-15A-3 NMSA 1978 (being Laws 1997, Chapter 193, Section 3) 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, video and audio laser and CD ROM discs, video and audio tapes or other technologies and the 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 Act whether designated as a lease, bond, note, loan, warrant, debenture, obligation 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 89 Section 2

Section 2. Section 22-25-2 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

"22-25-2. DEFINITIONS.--As used in the Public School Capital Improvements Act:

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and

B. "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act but excluding any other debt service expenses, for:

(1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

(2) purchasing or improving public school grounds;

(3) maintenance of public school buildings or public school grounds, exclusive of salary expenses of school district employees;

(4) purchasing activity vehicles for transporting students to extracurricular school activities; and

(5) purchasing computer software and hardware for student use in public school classrooms."

Chapter 89 Section 3

Section 3. Section 22-26-2 NMSA 1978 (being Laws 1983, Chapter 163, Section 2) is amended to read:

"22-26-2. DEFINITIONS.--As used in the Public School Buildings Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings; and

B. purchasing or improving public school grounds."

Chapter 89 Section 4

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

HOUSE BILL 718

CHAPTER 90

RELATING TO MANUFACTURED HOUSING; AMENDING A SECTION OF THE MANUFACTURED HOUSING ACT TO EXEMPT CERTAIN WEATHERIZATION TECHNICIANS FROM THE LICENSURE REQUIREMENTS OF THE ACT.

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

Chapter 90 Section 1

Section 1. Section 60-14-8 NMSA 1978 (being Laws 1977, Chapter 6, Section 1, as amended) is amended to read:

"60-14-8. LICENSURE--EXEMPTION.--The provisions of Section 60-14-7 NMSA 1978 shall not apply to:

A. licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee; or

B. technicians working on weatherization projects that do not exceed a cost of three thousand five hundred dollars ($3,500) and that are administered by a state or federal agency."

HOUSE BILL 562

CHAPTER 91

RELATING TO REAL PROPERTY; REVISING THE TERMS AND CONDITIONS OF RENTAL AGREEMENTS; AMENDING THE UNIFORM OWNER-RESIDENT RELATIONS ACT.

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

Chapter 91 Section 1

Section 1. Section 47-8-3 NMSA 1978 (being Laws 1975, Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS.--As used in the Uniform Owner-Resident Relations Act:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, in excess of seven continuous days; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined, including an action for possession;

C. "amenity" means a facility appurtenance or area supplied by the owner and the absence of which would not materially affect the health and safety of the resident or the habitability of the dwelling unit;

D. "codes" includes building codes, housing codes, health and safety codes, sanitation codes and any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy or use of a dwelling unit;

E. "deposit" means an amount of currency or instrument delivered to the owner by the resident as a pledge to abide by terms and conditions of the rental agreement;

F. "dwelling unit" means a structure, mobile home or the part of a structure, including a hotel or motel, that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes a parcel of land leased by its owner for use as a site for the parking of a mobile home;

G. "eviction" means any action initiated by the owner to regain possession of a dwelling unit and use of the premises under terms of the Uniform Owner-Resident Relations Act;

H. "fair rental value" is that value that is comparable to the value established in the market place;

I. "good faith" means honesty in fact in the conduct of the transaction concerned as evidenced by all surrounding circumstances;

J. "normal wear and tear" means deterioration that occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, abuse or intentional damage of the premises, equipment or chattels of the owner by the residents or by any other person in the dwelling unit or on the premises with the resident's consent; however, uncleanliness does not constitute normal wear and tear;

K. "organization" includes a corporation, government, governmental subdivision or agency thereof, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

L. "owner" means one or more persons, jointly or severally, in whom is vested:

(1) all or part of the legal title to property, but shall not include the limited partner in an association regulated under the Uniform Limited Partnership Act; or

(2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment use;

M. "person" includes an individual, corporation, entity or organization;

N. "premises" means facilities, facilities and appurtenances, areas and other facilities held out for use of the resident or whose use is promised to the resident coincidental with occupancy of a dwelling unit;

O. "rent" means payments in currency or in-kind under terms and conditions of the rental agreement for use of a dwelling unit or premises, to be made to the owner by the resident, but does not include deposits;

P. "rental agreement" means all agreements between an owner and resident and valid rules and regulations adopted under Section 47-8-23 NMSA 1978 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises;

Q. "resident" means a person entitled under a rental agreement to occupy a dwelling unit in peaceful possession to the exclusion of others and includes the owner of a mobile home renting premises, other than a lot or parcel in a mobile home park, for use as a site for the location of the mobile home;

R. "roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility in a structure where one or more major facilities are used in common by occupants of the dwelling units. As referred to in this subsection, "major facility", in the case of a bathroom, means toilet and either a bath or shower and, in the case of a kitchen, means refrigerator, stove or sink;

S. "single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit;

T. "substantial violation" means a violation of the rental agreement or rules and regulations by the resident or occurring with the resident's consent that occurs in the dwelling unit, on the premises or within three hundred feet of the premises and that includes the following conduct, which shall be the sole grounds for a substantial violation:

(1) possession, use, sale, distribution or manufacture of a controlled substance, excluding misdemeanor possession and use;

(2) unlawful use of a deadly weapon;

(3) unlawful action causing serious physical harm to another person;

(4) sexual assault or sexual molestation of another person;

(5) entry into the dwelling unit or vehicle of another person without that person's permission and with intent to commit theft or assault;

(6) theft or attempted theft of the property of another person by use or threatened use of force; or

(7) intentional or reckless damage to property in excess of one thousand dollars ($1,000);

U. "term" is the period of occupancy specified in the rental agreement; and

V. "transient occupancy" means occupancy of a dwelling unit for which rent is paid on less than a weekly basis or where the resident has not manifested an intent to make the dwelling unit a residence or household."

Chapter 91 Section 2

Section 2. Section 47-8-20 NMSA 1978 (being Laws 1975, Chapter 38, Section 20, as amended) is amended to read:

"47-8-20. OBLIGATIONS OF OWNER.--

A. The owner shall:

(1) substantially comply with requirements of the applicable minimum housing codes materially affecting health and safety;

(2) make repairs and do whatever is necessary to put and keep the premises in a safe condition as provided by applicable law and rules and regulations as provided in Section 47-8-23 NMSA 1978;

(3) keep common areas of the premises in a safe condition;

(4) maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, if any, supplied or required to be supplied by him;

(5) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(6) supply running water and a reasonable amount of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the resident and supplied by a direct public utility connection.

B. If there exists a minimum housing code applicable to the premises, the owner's maximum duty under this section shall be determined by Paragraph (1) of Subsection A of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

C. The owner and resident of a single family residence may agree that the resident perform the owner's duties specified in Paragraphs (5) and (6) of Subsection A of this section and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is in writing, for consideration, entered into in good faith and not for the purpose of evading the obligations of the owner.

D. The owner and resident of a dwelling unit other than a single family residence may agree that the resident is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the owner and is set forth in a separate writing signed by the parties and supported by consideration; and

(2) the agreement does not diminish or affect the obligation of the owner to other residents in the premises.

E. Notwithstanding any provision of this section, an owner may arrange with a resident to perform the obligations of the owner. Any such arrangement between the owner and the resident will not serve to diminish the owner's obligations as set forth in this section, nor shall the failure of the resident to perform the obligations of the owner serve as a basis for eviction or in any way be considered a material breach by the resident of his obligations under the Uniform Owner-Resident Relations Act or the rental agreement.

F. In multi-unit housing, if there is separate utility metering for each unit, the resident shall receive a copy of the utility bill for his unit upon request made to the owner or his agent. If the unit is submetered, the resident shall then be entitled to receive a copy of the apartment's utility bill. When utility bills for common areas are separately apportioned between units and the costs are passed on to the residents of each unit, each resident may, upon request, receive a copy of all utility bills being apportioned. The calculations used as the basis for apportioning the cost of utilities for common areas and submetered apartments shall be made available to any resident upon request. The portion of the common area cost that would be allocated to an empty unit if it were occupied shall not be allocated to the remaining residents. It is solely the owner's responsibility to supply the items and information in this subsection to the resident upon request. The owner may charge an administrative fee not to exceed five dollars ($5.00) for each monthly request of the items in this subsection.

G. The owner shall provide a written rental agreement to each resident prior to the beginning of occupancy."

Chapter 91 Section 3

Section 3. Section 47-8-26 NMSA 1978 (being Laws 1975, Chapter 38, Section 26) is amended to read:

"47-8-26. DELIVERY OF POSSESSION.--

A. At the time specified in the rental agreement for the commencement of occupancy, the owner shall deliver possession of the premises to the resident in compliance with the rental agreement and Section 47-8-20 NMSA 1978. The owner may bring an action for possession against the resident or any person wrongfully in possession and may recover the damages provided in Subsection F of Section 47-8-33 NMSA 1978.

B. If the owner fails to deliver possession of the premises to the prospective resident as provided in Subsection A of this section, one hundred percent of the rent abates until possession is delivered and the prospective resident may:

(1) upon written notice to the owner, terminate the rental agreement effective immediately. Upon termination the owner shall return all prepaid rent and deposits; or

(2) demand performance of the rental agreement by the owner and, if the prospective resident elects, maintain an action for possession of the premises against any person

wrongfully withholding possession and recover the damages sustained by him and seek the remedies provided in Section 47-8-48 NMSA 1978.

C. If the owner makes reasonable efforts to obtain possession of the premises and returns prepaid rents, deposits and fees within seven days of receiving a prospective resident's notice of termination, the owner shall not be liable for damages under this section."

Chapter 91 Section 4

Section 4. Section 47-8-27.2 NMSA 1978 (being Laws 1995, Chapter 195, Section 12) is amended to read:

"47-8-27.2. ABATEMENT.--

A. If there is a violation of Subsection A of Section 47-8-20 NMSA 1978, other than a failure or defect in an amenity, the resident shall give written notice to the owner of the conditions needing repair. If the owner does not remedy the conditions set out in the notice within seven days of the notice, the resident is entitled to abate rent as set forth below:

(1) one-third of the pro-rata daily rent for each day from the date the resident notified the owner of the conditions needing repair, through the day the conditions in the notice are remedied. If the conditions complained of continue to exist without remedy through any portion of a subsequent rental period, the resident may abate at the same rate for each day that the conditions are not remedied; and

(2) one hundred percent of the rent for each day from the date the resident notified the owner of the conditions needing repair until the date the breach is cured if the dwelling is uninhabitable and the resident does not inhabit the dwelling unit as a result of the condition.

B. For each rental period in which there is a violation under Subsection A of this section, the resident may abate the rent or may choose an alternate remedy in accordance with the Uniform Owner-Resident Relations Act. The choice of one remedy shall not preclude the use of an alternate remedy for the same violation in a subsequent rental period.

C. If the resident's rent is subsidized in whole or in part by a government agency, the abatement limitation of one month's rent shall mean the total monthly rent paid for the dwelling and not the portion of the rent that the resident alone pays. Where there is a third party payor, either the payor or the resident may authorize the remedy and may abate rent payments as provided in this section.

D. Nothing in this section shall limit a court in its discretion to apply equitable abatement.

E. Nothing in this section shall entitle the resident to abate rent for the unavailability of an amenity."

Chapter 91 Section 5

Section 5. Section 47-8-33 NMSA 1978 (being Laws 1975, Chapter 38, Section 33, as amended) is amended to read:

"47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY OWNER.--

A. Except as provided in the Uniform Owner-Resident Relations Act, if there is noncompliance with Section 47-8-22 NMSA 1978 materially affecting health and safety or upon the initial material noncompliance by the resident with the rental agreement or any separate agreement, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days.

B. Upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach, the owner shall deliver a written notice to the resident specifying the acts and omissions constituting the breach, including the dates and specific facts describing the nature of the alleged breach, and stating that the rental agreement shall terminate upon a date not less than seven days after receipt of the notice. If the subsequent breach occurs more than six months after the initial breach, it shall constitute an initial breach for purposes of applying the provisions of this section.

C. The initial notice provided in this section shall state that the rental agreement will terminate upon the second material noncompliance with the rental agreement or any separate agreement by the resident, within six months of the initial breach. To be effective, any notice pursuant to this subsection shall be given within thirty days of the breach or knowledge thereof.

D. If rent is unpaid when due and the resident fails to pay rent within three days after written notice from the owner of nonpayment and his intention to terminate the rental agreement, the owner may terminate the rental agreement and the resident shall immediately deliver possession of the dwelling unit; provided that tender of the full amount due, in the manner stated in the notice, prior to the expiration of the three-day notice shall bar any action for nonpayment of rent.

E. In any court action for possession for nonpayment of rent or other charges where the resident disputes the amount owed because:

(1) the resident has abated rent pursuant to Section 47-8-27.2 or 47-8-4 NMSA 1978; or

(2) the owner has allocated rent paid by the resident as payment for damages to the premises, then, if the owner is the prevailing party, the court shall enter a writ of restitution conditioned upon the right of the resident to remedy within three days of entry of judgment. If the resident has satisfied the judgment within three days, the writ shall be dismissed. If the resident has not satisfied the judgment within three days, the owner may execute upon the writ without further order of the court.

F. Except as provided in the Uniform Owner-Resident Relations Act, the owner may recover damages and obtain injunctive or other relief for any noncompliance by the resident with the rental agreement or this section or Section 47-8-22 NMSA 1978.

G. In a judicial action to enforce a remedy for which prior written notice is required, relief may be granted based only upon the grounds set forth in the written notice served; provided, however, that this shall not bar a defendant from raising any and all defenses or counterclaims for which written notice is not otherwise required by the Uniform Owner-Resident Relations Act.

H. When the last day for remedying any breach pursuant to written notice required under the Uniform Owner-Resident Relations Act occurs on a weekend or federal holiday, the period to remedy shall be extended until the next day that is not a weekend or federal holiday.

I. If the resident knowingly commits or consents to another person in the dwelling unit or on the premises knowingly committing a substantial violation, the owner shall deliver a written notice to the resident specifying the time, place and nature of the act constituting the substantial violation and that the rental agreement will terminate upon a date not less than three days after receipt of the notice.

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

K. In any action for possession under Subsection I of this section, it shall be a defense that the resident did not know of, and could not have reasonably known of or prevented, the commission of a substantial violation by any other person in the dwelling unit or on the premises.

L. In an action for possession under Subsection I of this section, it shall be a defense that the resident took reasonable and lawful actions in defense of himself, others or his property.

M. In any action for possession under Subsection I of this section, if the court finds that the action was frivolous or brought in bad faith, the petitioner shall be subject to a civil penalty equal to two times the amount of the monthly rent, plus damages and costs."

Chapter 91 Section 6

Section 6. Section 47-8-39 NMSA 1978 (being Laws 1975, Chapter 38, Section 39, as amended) is amended to read:

"47-8-39. OWNER RETALIATION PROHIBITED.--

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous six months:

(1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;

(2) organized or become a member of a residents' union, association or similar organization;

(3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act, including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under Section 47-8-20 NMSA 1978;

(4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;

(5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;

(6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978.

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in Section 47-8-48 NMSA 1978 and the violation shall be a defense in any action against him for possession.

C. Notwithstanding the provisions of Subsection A of this section, the owner may increase the rent or change services upon appropriate notice at the end of the term of

the rental agreement or as provided under the terms of the rental agreement if the owner can establish that the increased rent or changes in services are consistent with those imposed on other residents of similar rental units and are not directed at the particular resident, but are uniform."

Chapter 91 Section 7

Section 7. Section 47-8-47 NMSA 1978 (being Laws 1975, Chapter 38, Section 47, as amended) is amended to read:

"47-8-47. APPEAL STAYS EXECUTION.--

A. If either party feels aggrieved by the judgment, that party may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of restitution; provided that in cases in which the resident is the appellant, the execution of the writ of restitution shall not be stayed unless the resident, within five days of the filing of the notice of appeal, pays to the owner or into an escrow account with a professional escrow agent an amount equal to the rental amount that shall come due from the day following the judgment through the end of that rental period. The resident shall continue to pay the monthly rent established by the rental agreement at the time the complaint was filed, on a monthly basis on the date rent would otherwise become due. Payments pursuant to this subsection by a subsidized resident shall not exceed the actual amount of monthly rent paid by that resident. When the resident pays the owner directly, the owner shall immediately provide a written receipt to the resident upon demand. When the resident pays into an escrow account the resident shall cause such amounts to be paid over to the owner immediately upon receipt unless otherwise ordered by the court. Upon the failure of the resident or the escrow agent to make a monthly rent payment on the first day rent would otherwise be due, the owner may serve a three-day written notice on the resident pursuant to Subsection D of Section 47-8-33 NMSA 1978. If the resident or the resident's escrow agent fails to pay the rent within the three days, a hearing on the issue shall be scheduled within ten days from the date the court is notified of the failure to pay rent. In the case of an appeal de novo, the hearing shall be in the court in which the appeal will be heard. If, at the hearing, the court finds that rent has not been paid, the court shall immediately lift the stay and issue the writ of restitution unless the resident demonstrates a legal justification for failing to comply with the rent payment requirement.

B. In order to stay the execution of a money judgment, the trial court, within its discretion, may require an appellant to deposit with the clerk of the trial court the amount of judgment and costs or to give a supersedeas bond in the amount of judgment and costs with or without surety. Any bond or deposit shall not be refundable during the pendency of any appeal."

Chapter 91 Section 8

Section 8. REPEAL.--Section 47-8-28 NMSA 1978 (being Laws 1975, Chapter 38, Section 28, as amended) is repealed.

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 48

CHAPTER 92

RELATING TO MUNICIPAL EMPLOYEE RETIREMENT; ALLOWING A MUNICIPAL AFFILIATED PUBLIC EMPLOYER TO CONTRIBUTE UP TO SEVENTY-FIVE PERCENT OF EMPLOYEE MEMBER CONTRIBUTIONS.

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

Chapter 92 Section 1

Section 1. Section 10-11-5 NMSA 1978 (being Laws 1987, Chapter 253, Section 5) is amended to read:

"10-11-5. CREDITED SERVICE--MUNICIPAL ELECTION TO MAKE EMPLOYEE CONTRIBUTIONS.--A municipal affiliated public employer may elect by resolution of its governing body and in the manner prescribed by the retirement board to be responsible for making contributions of up to seventy-five percent of its employees' member contributions as follows:

A. the resolution shall be irrevocable; however, a municipal affiliated public employer may by subsequent resolution:

(1) elect to increase the percentage of employee member contributions for which it will be responsible; or

(2) at the time a new coverage plan is adopted, elect to be responsible for a different percentage of employee member contributions than that which it elected under a previous coverage plan;

B. the resolution shall apply to all employees or else to specified employee divisions of the municipal affiliated public employer and shall be effective the first pay period of the month following the filing of the resolution with the retirement board;

C. the portion of the employee contributions made by the municipal affiliated public employer on behalf of a member shall be credited to the member's individual accumulated member contribution account in the member contribution fund. The member shall be responsible for the difference between the contributions the member would be required to make if the municipal affiliated public employer had not made the

election provided for in this section and the amount contributed by the municipal affiliated public employer under the provisions of this section;

D. pensions payable to members whose municipal affiliated public employer makes the election provided for in this section shall be the same as if the member had made the entire member contribution; and

E. any municipal affiliated public employer increasing the percentage of the employee member contributions it elects to make pursuant to this section shall submit a resolution to the association by July 1 of the fiscal year in which the increase will take place indicating the percentage of the employee member contributions that will be made by the municipal affiliated public employer."

Chapter 92 Section 2

Section 2. EFFECTIVE DATE--CONTINGENCY--INTERNAL REVENUE SERVICE RULING.--

A. The effective date of this act is July 1, 1999.

B. If the public employees retirement association receives a ruling from the internal revenue service that the provisions of this act jeopardize the qualified status of the public employees retirement plan, the provisions of this act shall be null and void as of the date of receipt of the ruling.

HOUSE BILL 271

CHAPTER 93

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING PAYMENTS ON BEHALF OF CERTAIN RETIRED MEMBERS AND CERTAIN REEMPLOYED MEMBERS WHO DIE BEFORE RECOUPING THE AMOUNT OF THEIR CONTRIBUTIONS PLUS INTEREST.

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

Chapter 93 Section 1

Section 1. Section 22-11-26 NMSA 1978 (being Laws 1967, Chapter 16, Section 149, as amended) is amended to read:

"22-11-26. DEATH DURING REEMPLOYMENT.--If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act, the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive an amount equal to the sum of the member's contributions, including contributions made by the member during the period of last reemployment, plus accumulated interest at the average rate earned by the fund during the preceding five fiscal years, less the total benefits received prior to the last reemployment; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected."

Chapter 93 Section 2

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 such election shall be irrevocable, to receive the actuarial equivalent of his retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on his 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 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. 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 G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B. 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 earned by the fund during the preceding fiscal year 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.

E. In the case of death of a retired member who did not elect either Option B or C and before the benefits paid to him have equaled the sum of his accumulated contributions to the fund plus accumulated interest at the average rate earned by the fund during the preceding five fiscal years, 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.

F. 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.

G. 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 C 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 earned by the fund during the preceding fiscal year 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. Any elections of either Option B or C of Subsection A of this section on file with the director by members who have not retired prior to June 30, 1984 are void."

HOUSE BILL 353

CHAPTER 94

RELATING TO AUTOMATED EXTERNAL DEFIBRILLATORS; ENACTING THE CARDIAC ARREST RESPONSE ACT; PROVIDING CERTAIN REQUIREMENTS FOR ENTITIES ESTABLISHING A DEFIBRILLATION PROGRAM; REQUIRING CERTAIN TRAINING FOR DESIGNATED USERS OF A DEFIBRILLATOR; REQUIRING REGISTRATION OF A DEFIBRILLATION PROGRAM WITH THE DEPARTMENT OF HEALTH; REQUIRING ACTIVATION OF THE EMERGENCY MEDICAL SERVICES SYSTEM IN AN EMERGENCY SITUATION WHERE A DEFIBRILLATOR IS USED; PROVIDING IMMUNITY FROM LIABILITY FOR CERTAIN PERSONS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Chapter 94 Section 1

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Cardiac Arrest Response Act".

Chapter 94 Section 2

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) each year more than three hundred fifty thousand Americans die from out-of-hospital sudden cardiac arrest;

(2) the American heart association estimates that more than twenty thousand deaths could be prevented each year if early defibrillation were more widely available. In cardiac arrest the first several minutes are the most crucial time in which performing defibrillation can significantly improve chances for survival;

(3) the reality is that even in the best emergency medical services systems, emergency medical technicians or first responders may not always be able to arrive during that critical window of time; and

(4) virtually all communities in New Mexico have invested in 911 emergency response systems, emergency medical personnel and ambulance vehicles. However, many of them do not have enough defibrillators in their community.

B. It is the purpose of the Cardiac Arrest Response Act to encourage greater acquisition, deployment and use of automated external defibrillators in communities across the state.

Chapter 94 Section 3

Section 3. DEFINITIONS.--As used in the Cardiac Arrest Response Act:

A. "automated external defibrillator and semi-automatic external defibrillation (AED)" means a medical device heart monitor and defibrillator that:

(1) has received approval of its pre-market modification filed pursuant to 21 U.S.C. 360(k), from the United States food and drug administration;

(2) is capable of recognizing cardiac arrest that will respond to defibrillation, ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining whether defibrillation should be performed; and

(3) upon determining that defibrillation should be performed, automatically charges and is capable of delivering an electrical impulse to an individual's heart;

B. "AED program" means a program of trained targeted responders operating under the supervision of a physician medical director and is registered with the department;

C. "defibrillation" means the administration of a controlled electrical charge to the heart to restore a viable cardiac rhythm;

D. "department" means the department of health;

E. "physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico; and

F. "trained targeted responder" means a person who has completed an authorized AED training program and who uses an AED.

Chapter 94 Section 4

Section 4. PROTECTION OF PUBLIC SAFETY.--A person who acquires an AED shall ensure that:

A. a physician medical director oversees all aspects of the defibrillation program, including training, emergency medical services coordination, protocol approval, AED deployment strategies and other program requirements, and that the physician medical director provides overall quality assurance and reviews each case in which the AED is used by the program;

B. the trained targeted responder receives appropriate training in cardiopulmonary resuscitation and in the use of an AED by a nationally recognized course in cardiopulmonary response and AED use approved by the department or other training programs authorized by the department;

C. the defibrillator is maintained and tested according to the manufacturer's guidelines;

D. any person who renders emergency care or treatment on a person in cardiac arrest by using an AED activates the emergency medical system as soon as possible, and reports any clinical use of the AED to the physician medical director;

E. the AED program is registered with the department; and

F. the local emergency medical services and local 911 agencies have been notified of the AED program.

Chapter 94 Section 5

Section 5. AUTHORITY.--Any person may use an AED if the person has met all the requirements of Section 4 of the Cardiac Arrest Response Act. Nothing in this section limits the right of an individual to practice a health profession that the individual is otherwise authorized to practice under the laws of New Mexico.

Chapter 94 Section 6

Section 6. EXEMPTION.--Nothing in the Cardiac Arrest Response Act precludes a physician from prescribing an AED to a patient for use by the patient's caregiver on an individual patient and the use does not require the individual to function in an approved program.

Chapter 94 Section 7

Section 7. LIMITED IMMUNITY PROTECTIONS.--The following persons or entities who render emergency care or treatment by the use of an AED under the provisions of the Cardiac Arrest Response Act shall not be subject to civil liability provided they have acted with reasonable care and in compliance with the requirements of that act:

A. a physician who provides supervisory services pursuant to the Cardiac Arrest Response Act;

B. a person or entity that provides training in cardiopulmonary resuscitation and use of automated external defibrillation;

C. a person or entity that acquires an AED pursuant to the Cardiac Arrest Response Act;

D. the owner of the property or facility where the AED is located; and

E. the trained targeted responder.

Chapter 94 Section 8

Section 8. Section 24-10B-4 NMSA 1978 (being Laws 1983, Chapter 190, Section 4, as amended) is amended to read:

"24-10B-4. BUREAU--DUTIES.--The bureau is designated as the lead agency for the emergency medical services system and shall establish and maintain a program for regional planning and development, improvement, expansion and direction of emergency medical services throughout the state, including:

A. design, development, implementation and coordination of communications systems to join the personnel, facilities and equipment of a given region or system that will allow for medical control of pre-hospital or interfacility care;

B. provision of technical assistance to the public regulation commission for further development and implementation of standards for certification of ambulance services, vehicles and equipment;

C. development of requirements for the collection of data and statistics to evaluate the availability, operation and quality of providers in the state;

D. adoption of regulations for medical direction of a provider or emergency medical services system upon the recommendation of the medical direction committee, including:

(1) development of model guidelines for medical direction of all components of an emergency medical services system;

(2) a process for notifying the bureau of the withdrawal of medical control by a physician from a provider; and

(3) specific requirements for medical direction of intermediate and advanced life support personnel and basic life support personnel with special skills approval;

E. maintenance of a list of approved emergency medical services training programs, the graduates of which shall be the only New Mexico emergency medical services students eligible to apply for emergency medical technician licensure or certified emergency medical services first responder certification;

F. approval of continuing education programs for emergency medical services personnel;

G. adoption of regulations pertaining to the training and certification of emergency medical dispatchers and their instructors;

H. adoption of regulations based upon the recommendations of the trauma advisory committee, for implementation and monitoring of a statewide, comprehensive trauma care system, including:

(1) minimum standards for designation or retention of designation as a trauma center or a participating trauma facility;

(2) pre-hospital care management guidelines for the triage and transportation of traumatized persons;

(3) establishment for interfacility transfer criteria and transfer agreements;

(4) standards for collection of data relating to trauma system operation, patient outcome and trauma prevention; and

(5) creation of a state trauma care plan;

I. adoption of regulations, based upon the recommendations of the air transport advisory committee, for the certification of air ambulance services;

J. adoption of regulations pertaining to authorization of providers to honor advance directives to withhold or terminate care in certain pre-hospital or interfacility circumstances, as guided by local medical protocols;

K. development of guidelines, with consultation from the state fire marshal, pertaining to the operation of medical-rescue services within the emergency medical services system;

L. operation of a critical incident stress debriefing program for emergency responders utilizing specifically trained volunteers who shall be considered public employees for the purposes of the Tort Claims Act when called upon to perform a debriefing; and

M. adoption of rules to establish a cardiac arrest targeted response program pursuant to the Cardiac Arrest Response Act, including registration of automated external defibrillator programs, maintenance of equipment, data collection, approval of automated external defibrillator training programs and a schedule of automated external defibrillator program registration fees."

Chapter 94 Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 375, AS AMENDED

CHAPTER 95

RELATING TO MAGISTRATE COURTS; CLARIFYING THE OPERATIONS OF CERTAIN MAGISTRATE DISTRICTS; AUTHORIZING A MAGISTRATE JUDGE TO HEAR CASES IN ANOTHER MAGISTRATE DISTRICT FOR A SPECIFIC PERIOD OF TIME; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 95 Section 1

Section 1. Section 35-1-37 NMSA 1978 (being Laws 1968, Chapter 62, Section 39) is amended to read:

"35-1-37. MAGISTRATE COURT--PRESIDING MAGISTRATE.--In magistrate districts where two or more divisions operate as a single court, the director of the administrative office of the courts shall designate the magistrate of one of the divisions as "presiding magistrate" to perform administrative duties prescribed by regulation of the administrative office."

Chapter 95 Section 2

Section 2. Section 35-3-6 NMSA 1978 (being Laws 1968, Chapter 62, Section 51, as amended) is amended to read:

"35-3-6. JURISDICTION--TERRITORIAL LIMITS.--

A. The territorial jurisdiction of a magistrate is coextensive with the magistrate district in which he serves. A magistrate also has jurisdiction in any criminal action involving violation of a law relating to motor vehicles arising in any magistrate district adjoining at any point that in which he serves and within magistrate trial jurisdiction; provided that the defendant is entitled to a change of venue to the district where the cause of action arose if he so moves at, or within fifteen days after, arraignment.

B. A magistrate has jurisdiction to sit in any action arising in any other magistrate district when designated for a specific period of time by any district judge because of the unavailability of a magistrate in that magistrate district. Any magistrate acting in another magistrate district by designation under this subsection shall include the cases heard by designation in his own reports to the administrative office of the courts, indicating on the reports that his jurisdiction is by designation. No costs or fees shall be collected by any court for any filing or proceeding under this subsection.

C. In any criminal action in which a magistrate has territorial jurisdiction over the offense pursuant to this section, the magistrate court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant wherever he resides or may be found within the state.

D. In any civil action arising within the magistrate's territorial jurisdiction, the magistrate court has personal jurisdiction over the defendant for the purpose of service of process upon the defendant wherever he resides or may be found within the state.

E. The territorial limitations of magistrate court jurisdiction shall not apply to actions to enforce judgments entered in the magistrate district and writs issued in aid of those actions."

Chapter 95 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 376, AS AMENDED

CHAPTER 96

RELATING TO HIGHWAYS; ALLOWING POLICE AND THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT TO CLEAR HIGHWAY OBSTRUCTIONS.

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

Chapter 96 Section 1

Section 1. Section 66-7-349 NMSA 1978 (being Laws 1978, Chapter 35, Section 453) is amended to read:

"66-7-349. STOPPING, STANDING OR PARKING OUTSIDE OF BUSINESS OR RESIDENCE DISTRICTS.--

A. Upon any highway outside of a business or residence district, no person shall stop, park or leave standing a vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or leave the vehicle off such part of the highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon the highway.

B. Subsection A of this section does not apply to the driver of a vehicle that is disabled while on the paved or main-traveled portion of a highway in such manner and to such

extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position.

C. The state highway and transportation department, unless otherwise directed by an investigating police officer, or a police officer may remove or cause to be removed a vehicle or other obstruction from the paved or main-traveled part of a highway to the nearest place of safety if the vehicle or other obstruction obstructs traffic or poses a traffic hazard."

HOUSE BILL 433

CHAPTER 97

RELATING TO THE PROCUREMENT CODE; PROVIDING THAT THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT MAY USE A DESIGN AND BUILD DELIVERY SYSTEM IN FISCAL YEARS 1999 THROUGH 2003 FOR TWO PROJECTS; DECLARING AN EMERGENCY.

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

Chapter 97 Section 1

Section 1. TEMPORARY PROVISION.--Notwithstanding the prohibition and requirements of Subsection A of Section

13-1-119.1 NMSA 1978, the state highway and transportation department may, pursuant to the Procurement Code, use a design and build delivery system in fiscal years 1999 through 2003 for two highway construction or reconstruction projects. The projects selected by the state highway and transportation department shall be comparable to other highway construction or reconstruction projects to assist the department in evaluating the advantages, if any, of using a design and build delivery system, including cost savings, time savings, improved quality, innovation, lower incidence of claims, improved risk management and reduced project administration.

Chapter 97 Section 2

Section 2. REPEAL.--Section 1 of this act is repealed on July 1, 2003.

Chapter 97 Section 3

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

HOUSE BILL 506

CHAPTER 98

RELATING TO WAGES; PROVIDING THAT EMPLOYERS OF WORKERS ENGAGED IN AGRICULTURE ARE EXEMPT FROM THE OVERTIME PROVISIONS OF THE MINIMUM WAGE ACT; AMENDING A SECTION OF THE MINIMUM WAGE ACT.

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

Chapter 98 Section 1

Section 1. Section 50-4-24 NMSA 1978 (being Laws 1975, Chapter 275, Section 1) is amended to read:

"50-4-24. EMPLOYERS EXEMPT FROM OVERTIME PROVISIONS FOR CERTAIN EMPLOYEES.--

A. Any employer of workers engaged in the ginning of cotton for market, in any place of employment located within a county where cotton is grown in commercial quantities, and each employee is employed for a period of not more than fourteen weeks in the aggregate in any calendar year, is exempt from the overtime provisions of Subsection C of Section 50-4-22 NMSA 1978.

B. An employer of workers engaged in agriculture is exempt from the overtime provisions set forth in Subsection C of Section 50-4-22 NMSA 1978. As used in this subsection, "agriculture" has the meaning used in Section 203 of the federal Fair Labor Standards Act."

HOUSE BILL 782

CHAPTER 99

RELATING TO COMMERCIAL TRANSACTIONS; CLARIFYING THAT A CONTINUATION STATEMENT REQUIRES SIGNATURE ONLY BY THE SECURED PARTY; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 90 Section 1

Section 1. Section 56-13-7 NMSA 1978 (being Laws 1987, Chapter 177, Section 7) is amended to read:

"56-13-7. CONTINUATION STATEMENT.--A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in Paragraph (6) of Subsection E of Section 56-13-3 NMSA 1978. Any such continuation

statement shall be signed by the secured party, shall identify the original statement by file number and shall state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective, whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement."

Chapter 90 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 76

CHAPTER 100

RELATING TO JOINT POWERS AGREEMENTS; INCLUDING AS PUBLIC AGENCIES CERTAIN SUBDIVISIONS OF INDIAN NATIONS, TRIBES OR PUEBLOS.

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

Chapter 100 Section 1

Section 1. Section 11-1-2 NMSA 1978 (being Laws 1961, Chapter 135, Section 2, as amended) is amended to read:

"11-1-2. DEFINITIONS.--As used in the Joint Powers Agreements Act:

A. "public agency" means the federal government or any federal department, agency or instrumentality; this state, an adjoining state or any state department, agency or instrumentality; an Indian nation, tribe or pueblo; a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation, tribe or pueblo to enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or an adjoining state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;

B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to any constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act does

not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;

C. "bonds" means revenue bonds;

D. "bondholder" means any person who is the bearer of any outstanding bond or the owner of bonds that are at the time registered to other than the bearer;

E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and

F. "instrumentality" means a public corporate entity created by state law but which is not subject to the general laws of the state and is not a state agency or department."

SENATE BILL 98

CHAPTER 101

RELATING TO ALCOHOLIC BEVERAGES; REMOVING THE PROHIBITION ON THE SALE OR SERVICE OF ALCOHOLIC BEVERAGES BY LICENSEES DURING VOTING HOURS ON ELECTION DAYS; AMENDING A SECTION OF THE LIQUOR CONTROL ACT.

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

Chapter 101 Section 1

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

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

A. Alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

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

(2) on other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections C and E of this section; provided, however, nothing in this

section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels.

B. Alcoholic beverages shall be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, on Mondays through Saturdays from 7:00 a.m. until 12:00 a.m. on the following day, except as provided in Subsections D and F of this section.

C. Subject to the provisions of Subsections E and G of this section, a dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars ($100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays from 12:00 noon until midnight and in those years when December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of the following day, except as otherwise provided in Subsection E of this section. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection G of this section shall be called "Sunday sales".

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

E. At the 1984 general election, the secretary of state shall order placed on the ballot in each local option district the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?". If the secretary of state determines a need, he may authorize the use of paper ballots for the purpose of the election provided for pursuant to this subsection. Until such election, Sunday sales shall be permitted on the same basis in any local option district as provided under any former act, and the election held at the first general election following the effective date of the Liquor Control Act shall have no effect on whether Sunday sales are permitted in any local option district. If the question is disapproved by a majority of those voting upon the question in the local option district, Sunday sales shall be unlawful in that local option district upon certification of the election returns, and the question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

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

petition shall be verified by the clerk of the county in which the local option district is situated.

F. On and after July 1, 1989, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees may sell, serve or allow the consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which, pursuant to petition and election under this subsection, a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for special municipal elections in a municipality under the Municipal Election Code. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

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

H. Subject to the provisions of Subsection I of this section, a dispenser or retailer, upon payment of an additional fee of one hundred dollars ($100), may obtain a permit to sell alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays from 12:00 noon until midnight, and in those years when December 31 falls

on a Sunday, from 12:00 noon on December 31 until 2:00 a.m. of the following day. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to the provisions of this subsection shall be called "Sunday package sales".

I. If a petition requesting the governing body of a local option district to call an election on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays is filed with the clerk of the governing body and that petition is signed by at least ten percent of the number of registered voters of the local option district and the clerk of the governing body verifies the petition signatures, the governing body shall adopt a resolution calling an election on the question. The election shall be held within sixty days of the date the petition is verified, or it may be held in conjunction with a regular election of the governing body, if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or special municipal elections within a municipality. If a majority of the voters of the local option district voting in the election votes to allow the sale of alcoholic beverages in unbroken packages for consumption off the licensed premises, then those sales shall continue to be allowed. If a majority of the voters of the local option district voting in the election votes not to allow the Sunday package sales, then those Sunday package sales shall be prohibited commencing the first Sunday after the results of the election are certified. Following the election, the question of allowing the Sunday package sales shall not be submitted again to the voters within two years of the date of the last election on the question."

Chapter 101 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 134

CHAPTER 102

RELATING TO ELECTIONS; PROHIBITING THE RELEASE OF ELECTION RESULTS PRIOR TO THE CLOSING OF POLLS; PRESCRIBING PENALTIES.

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

Chapter 102 Section 1

Section 1. UNLAWFUL RELEASE OF ELECTION RESULTS.--

A. Unlawful release of election results consists of the county clerk or a duly authorized deputy or assistant releasing election results prior to the closing of the polls on election day.

B. Whoever commits unlawful release of election results is guilty of a misdemeanor, pursuant to Section

31-19-1, NMSA 1978.

SENATE BILL 155, AS AMENDED

CHAPTER 103

RELATING TO VICTIMS' RIGHTS; AMENDING THE VICTIMS OF CRIME ACT; ADDING CERTAIN AGENCIES TO THOSE RESPONSIBLE FOR NOTIFICATION OF VICTIMS.

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

Chapter 103 Section 1

Section 1. Section 31-26-11 NMSA 1978 (being Laws 1994, Chapter 144, Section 11) is amended to read:

"31-26-11. PROCEDURES WHEN AN INMATE OR DELINQUENT CHILD ESCAPES--CORRECTIONS DEPARTMENT--CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--

A. The corrections department or the children, youth and families department shall immediately notify the sentencing judge or the children's court judge, the district attorney of the judicial district from which the inmate or delinquent child was committed and the probation officer who authored the presentence report when an inmate or delinquent child:

(1) escapes from a correctional facility or juvenile justice facility under the jurisdiction of the corrections department or the children, youth and families department; or

(2) convicted in New Mexico of a capital, first degree or second degree felony and transferred to a facility under the jurisdiction of another state escapes from that facility.

B. The district attorney shall immediately notify any person known to reside in his district who was a victim of the criminal or delinquent offense for which the inmate or delinquent child was committed."

Chapter 103 Section 2

Section 2. Section 31-26-12 NMSA 1978 (being Laws 1994, Chapter 144, Section 12) is amended to read:

"31-26-12. PROCEDURES WHEN AN INMATE IS RELEASED FROM INCARCERATION--ADULT PAROLE BOARD--CORRECTIONS DEPARTMENT--PROCEDURES WHEN A DELINQUENT CHILD IS RELEASED FROM CUSTODY--JUVENILE PAROLE BOARD--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--DISTRICT ATTORNEYS.--

A. The adult parole board and the juvenile parole board shall provide a copy of their respective regular release dockets to each district attorney in the state at least ten working days before the docket is considered by the board. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

B. The adult parole board and the juvenile parole board shall provide a copy of a supplemental, addendum or special docket to each district attorney at least five working days before the release docket is considered by the board.

C. Following consideration of a release docket by the adult parole board or the juvenile parole board, each board shall promptly notify each district attorney of any recommendations adopted by the board for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

D. In the case of an inmate scheduled to be released from incarceration without parole or prior to parole for any reason, or a delinquent child scheduled to be released from custody, the corrections department or the children, youth and families department shall notify each district attorney at least fifteen working days before the inmate's or delinquent child's release. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed."

Chapter 103 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 182

CHAPTER 104

RELATING TO COURTS; INCREASING THE JURISDICTIONAL AMOUNT FOR CIVIL ACTIONS IN METROPOLITAN COURT AND MAGISTRATE COURT; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 104 Section 1

Section 1. Section 34-8A-3 NMSA 1978 (being Laws 1979, Chapter 346, Section 3, as amended) is amended to read:

"34-8A-3. METROPOLITAN COURT--JURISDICTION.--

A. In addition to the jurisdiction provided by law for magistrate courts, a metropolitan court shall have jurisdiction within the county boundaries over all:

(1) offenses and complaints under ordinances of the county and of any municipality located within the county in which the court is located except municipalities with a population of more than two thousand five hundred but less than five thousand persons in the 1980 federal decennial census; provided that the metropolitan court shall not have jurisdiction over uncontested municipal parking violations;

(2) civil actions in which the debt or sum claimed does not exceed seven thousand five hundred dollars ($7,500), exclusive of interest and costs; and

(3) contested violations of parking or operation of vehicle regulations promulgated by a board of regents of a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico located within the county in which the court is located.

B. For the purposes of this section, "uncontested violation" is a violation for which a citation has been issued and the person has paid the citation by mail or in person to the appropriate issuing authority; and "contested violation" is a violation for which a citation has been issued and the person had indicated his intent to contest the citation or the person has not paid or answered the citation.

C. The issuing authority shall provide to the metropolitan court on a mutually agreed schedule the unpaid citations and a listing in a manner mutually agreed upon of unpaid citations.

D. The municipality shall retain as reimbursement for its expenses all revenues from uncontested municipal parking violations."

Chapter 104 Section 2

Section 2. Section 35-3-3 NMSA 1978 (being Laws 1968, Chapter 62, Section 48, as amended) is amended to read:

"35-3-3. JURISDICTION--CIVIL ACTIONS.--

A. Magistrates have jurisdiction in civil actions in which the debt or sum claimed does not exceed seven thousand five hundred dollars ($7,500), exclusive of interest and costs.

B. Except as provided in Subsection C of this section, civil jurisdiction extends to actions in contract, quasi-contract and tort and where expressly conferred by law.

C. A magistrate has no jurisdiction in any civil action:

(1) for malicious prosecution, libel or slander;

(2) against public officers for misconduct in office;

(3) for specific performance of contracts for the sale of real property;

(4) in which the title or boundaries of land may be in dispute or drawn into question;

(5) affecting domestic relations, including divorce, annulment or separation or custody, support, guardianship, adoption or dependency of children;

(6) to grant writs of injunction, habeas corpus or extraordinary writs; or

(7) where jurisdiction is vested exclusively in another court."

Chapter 104 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 227, AS AMENDED

CHAPTER 105

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AUTHORIZING THE PURCHASE OF CREDITED SERVICE FOR CIVILIAN PRISONERS OF WAR.

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

Chapter 105 Section 1

Section 1. Section 10-11-7 NMSA 1978 (being Laws 1987, Chapter 253, Section 7, as amended) is amended to read:

"10-11-7. CREDITED SERVICE--PURCHASE OF SERVICE.--

A. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has five or more years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(3) the aggregate amount of service credit purchased under this subsection does not exceed five years reduced by any period of service credit acquired for military service under any other provision of the Public Employees Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

B. A member who was a civilian prisoner of war captured while in service to the United States as an employee of the federal government or as an employee of a contractor with the federal government may purchase service credit for the period of internment as a civilian prisoner of war, provided that:

(1) the member provides proof of employment with the federal government or as a contractor to the federal government in a form acceptable to the association;

(2) the member provides proof of the period of internment in a form acceptable to the association;

(3) the member has at least five years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(4) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to any other provision of the Public Employees Retirement Act;

(5) service credit may not be purchased for periods of service in internment as a civilian prisoner of war if such periods are used to obtain or increase a benefit from another retirement program; and

(6) the member pays the association the purchase cost determined according to Subsection E of this section.

C. A member who was employed by a utility company, library, museum, transit company or by a nonprofit organization administering federally funded public service programs, which utility company, library, museum, transit company or nonprofit organization administering federally funded public service programs or federally funded public service programs administered by a nonprofit organization are subsequently taken over by an affiliated public employer, or a member who was employed by an entity created pursuant to a joint powers agreement between two or more affiliated public employers for the purpose of administering or providing drug or alcohol addiction treatment services irrespective of whether the entity is subsequently taken over by an affiliated public employer, may purchase credited service for the period of employment subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has five or more years of credited service acquired as a result of personal service rendered in the employ of an affiliated public employer; and

(3) the aggregate amount of credited service purchased under this subsection does not exceed five years.

D. A member who was appointed to participate in a cooperative work study training program established jointly by the state highway and transportation department and the university of New Mexico or New Mexico state university may purchase credited service for the period of participation subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has five or more years of credited service acquired as a result of personal service rendered in the employ of an affiliated public employer; and

(3) the aggregate amount of credited service purchased under this subsection does not exceed five years.

E. Except for service to be used under a state legislator coverage plan, the purchase cost for each month of credited service purchased under the provisions of this section is equal to the member's final average salary multiplied by the sum of the member contribution rate and employer contribution rate, determined in accordance with the coverage plan applicable to the member at the time of the written election to purchase. The purchase cost for each year of credited service to be used under a state legislator coverage plan is equal to the sum of the member contribution and an employer contribution of ten times the annual amount of pension per year of credited service under the state legislator coverage plan applicable to the member. Full payment shall be made in a single lump sum within sixty days of the date the member is informed of the amount of the payment. The portion of the purchase cost derived from the employer

contribution rate shall be credited to the employer accumulation fund and shall not be paid out of the association in the event of cessation of membership. In no case shall any member be credited with a month of service for less than the purchase cost as defined in this section.

F. A member shall be refunded, upon written request filed with the association, the portion of the purchase cost of credited service purchased under this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member.

G. A member of the magistrate retirement system who during his service as a magistrate was eligible to become a member of the public employees retirement system and elected not to become a member of that system may purchase service credit under the public employees retirement system for the period for which the magistrate elected not to become a public employees retirement system member, by paying the amount of the increase in the actuarial present value of the magistrate pension as a consequence of the purchase as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the board. Except as provided in Subsection F of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership."

SENATE BILL 235, AS AMENDED

CHAPTER 106

RELATING TO PUBLIC HEALTH; REDEFINING "SCHOOL" OR "COLLEGE" AS USED IN THE PROFESSIONAL PSYCHOLOGIST ACT; CHANGING THE EXAMINATION REQUIREMENTS FOR LICENSURE OF PSYCHOLOGISTS.

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

Chapter 106 Section 1

Section 1. Section 61-9-3 NMSA 1978 (being Laws 1963, Chapter 92, Section 3, as amended by Laws 1996, Chapter 51, Section 5 and also by Laws 1996, Chapter 54, Section 1) is amended to read:

"61-9-3. DEFINITIONS.--As used in the Professional Psychologist Act:

A. "board" means the New Mexico state board of psychologist examiners;

B. "person" includes an individual, firm, partnership, association or corporation;

C. "psychologist" means any person who engages in the practice of psychology or holds himself out to the public by any title or description of services representing himself as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain;

D. "practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psychoeducational evaluation, therapy, remediation and consultation; and

E. "school" or "college" means any university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association."

Chapter 106 Section 2

Section 2. Section 61-9-11 NMSA 1978 (being Laws 1963, Chapter 92, Section 10, as amended) is amended to read:

"61-9-11. LICENSURE--EXAMINATION.--

A. The board shall issue a license as a psychologist to each 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 he:

(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) holds a doctoral degree based in part on a psychological dissertation from a school or college;

(5) has had an internship approved by the American psychological association and one year of experience after receiving the doctoral degree or has had, after receiving the doctoral degree, at least two years of supervised experience in psychological work of a type satisfactory to the board; and

(6) demonstrates professional competence by passing:

(a) the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a total raw score of 140 (70%) 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; and

(b) an oral examination administered and graded by the board, investigating the applicant's training, experience and knowledge. The oral examination shall be evaluated on a pass-fail basis.

B. Upon investigation of the application and other evidence submitted, 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, he 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 106 Section 3

Section 3. TEMPORARY PROVISION.--Any person who, on the effective date of this act, is licensed as a psychologist associate and has met all of the requirements of Section 61-9-11 NMSA 1978 shall be issued a license as a psychologist without having to retake the examinations required by that section.

SENATE BILL 277, AS AMENDED

CHAPTER 107

RELATING TO ANIMALS; INCREASING CRIMINAL PENALTIES FOR CRUELTY TO ANIMALS; PROVIDING FOR SEIZURE OF ANIMALS; PROVIDING CRIMINAL PENALTIES FOR INJURY TO OR HARASSMENT OF A POLICE DOG, POLICE HORSE OR FIRE DOG; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 107 Section 1

Section 1. Section 30-18-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-1) is repealed and a new Section 30-18-1 NMSA 1978 is enacted to read:

"30-18-1. CRUELTY TO ANIMALS--EXTREME CRUELTY TO ANIMALS--PENALTIES--EXCEPTIONS.--As used in this section, animal does not include insects or reptiles.

A. Cruelty to animals consists of a person:

(1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or

(2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

B. As used in Subsection A of this section, "lawful justification" means:

(1) humanely destroying a sick or injured

animal; or

(2) protecting a person or animal from death or injury due to an attack by another animal.

C. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Extreme cruelty to animals consists of a person:

(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(2) maliciously killing an animal.

E. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

G. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

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

(1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;

(2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;

(3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;

(4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;

(5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;

(6) research facilities, intermediate handlers, carriers and exhibitors licensed pursuant to the provisions of 7 U.S.C. Section 2136; or

(7) other similar activities not otherwise prohibited by law.

I. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

J. The provisions of this section shall not be interpreted to prohibit cockfighting in New Mexico."

Chapter 107 Section 2

Section 2. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"SEIZURE OF ANIMALS--NOTICE.--

A. A peace officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court or the metropolitan court in the county where the animal is located for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the state for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

F. If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978."

Chapter 107 Section 3

Section 3. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"DISPOSITION OF SEIZED ANIMALS.--

A. If the court finds that the seized animal is not being cruelly treated and that the animal's owner is able to adequately provide for the animal, the court shall return the animal to its owner.

B. If the court finds that the seized animal is being cruelly treated or that the animal's owner is unable to adequately provide for the animal, the court shall hold a hearing to determine the disposition of the animal.

C. Upon conviction the court may place the animal for adoption with an animal shelter or animal welfare organization or provide for the humane destruction of the animal."

Chapter 107 Section 4

Section 4. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"COSTS.--

A. Upon conviction the defendant may be liable for the cost of boarding the animal and all necessary veterinary examinations and care provided to the animal.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings."

Chapter 107 Section 5

Section 5. A new section of Chapter 30, Article 18 NMSA 1978 is enacted to read:

"INJURY TO A POLICE DOG, POLICE HORSE OR FIRE DOG--HARASSMENT OF A POLICE DOG, POLICE HORSE OR FIRE DOG.--

A. As used in this section:

(1) "fire dog" means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

(2) "police dog" means a dog used by a law enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection; and

(3) "police horse" means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.

B. Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

(1) striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

(2) throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of the animal is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog, police horse or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog, police horse or fire dog by frightening, agitating, harassing or hindering the animal.

G. Whoever commits harassment of a police dog, police horse or fire dog is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

H. Whoever commits harassment of a police dog, police horse or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog, police horse or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures."

Chapter 107 Section 6

Section 6. REPEAL.--Sections 30-18-2 and 30-18-2.1 NMSA 1978 (being Laws 1963, Chapter 303, Section 18-2 and Laws 1981, Chapter 226, Section 1) are repealed.

Chapter 107 Section 7

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 339, AS AMENDED

CHAPTER 108

RELATING TO INTERGOVERNMENTAL TAX CREDIT; AMENDING A SECTION OF THE NMSA 1978; CLARIFYING THE DEFINITION OF INDIAN TRIBAL LAND.

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

Chapter 108 Section 1

Section 1. Section 7-29C-1 NMSA 1978 (being Laws 1995, Chapter 171, Section 1) is amended to read:

"7-29C-1. INTERGOVERNMENTAL TAX CREDITS.--

A. Any person who is liable for the payment of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax or the oil and gas ad valorem production tax imposed on products severed from Indian tribal land or imposed on the privilege of severing products from Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to products from qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production tax credit".

B. Any person who is liable for the payment of the oil and gas production equipment ad valorem tax imposed on equipment located on Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to equipment at qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production equipment tax credit".

C. For the purposes of this section:

(1) "equipment" means wells and nonmobile equipment used at a well in connection with severance, treatment or storage of well products;

(2) "Indian tribal land" means all land that on March 1, 1995 was within the exterior boundaries of an Indian reservation or pueblo grant or held in trust by the United States for an Indian person, nation, tribe or pueblo;

(3) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide; and

(4) "qualifying well" means a well on Indian tribal land, the actual drilling of which commenced on or after July 1, 1995.

D. The intergovernmental production tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of severance, privilege, ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) the aggregate amount of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax and the oil and gas ad valorem production tax imposed by this state upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells.

E. The intergovernmental production equipment tax credit shall be determined annually for the equipment at qualifying wells and shall be equal to seventy-five percent of the lesser of:

(1) the amount of ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the equipment for the calendar year; or

(2) the amount of the oil and gas production equipment ad valorem tax imposed by this state upon the equipment for the calendar year.

F. If, after March 1, 1995, an Indian nation, tribe or pueblo increases any severance, privilege, ad valorem or similar tax applicable to products or equipment to which the tax credits provided by this section apply, the amount of the intergovernmental production tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the production month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 1995, and the intergovernmental production equipment tax credit shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the year and the aggregate amount of tax that would have been imposed for the year by the terms of the tax or taxes in effect on March 1, 1995.

G. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas ad valorem production tax and oil and gas production equipment ad valorem tax due with respect to the products, severance of products or equipment taxed.

H. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act.

I. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and he shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based."

Chapter 108 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 433

CHAPTER 109

RELATING TO COURTS; PROVIDING FOR ADDITIONAL POSITIONS ON THE JUDICIAL STANDARDS COMMISSION; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 109 Section 1

Section 1. Section 34-10-1 NMSA 1978 (being Laws 1968, Chapter 48, Section 1) is amended to read:

"34-10-1. JUDICIAL STANDARDS COMMISSION-- SELECTION--TERMS.--The judicial standards commission consists of eleven positions:

A. positions 1 through 5 and position 10, each of which shall be filled by a person who is a qualified elector of this state, who is not a justice, judge or magistrate of any court and who is not licensed to practice law in this state. The governor shall fill each of these positions by appointment of qualified persons. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for five years or less, in such manner that at least one term expires on June 30 each year, and so that not more than four of the six positions are occupied by persons from the same political party. The initial terms for positions 1 through 5 begin on July 1, 1968. The initial term for position 10 begins on July 1, 1999. The terms expire as follows:

(1) position 1 on June 30, 1969;

(2) position 2 on June 30, 1970;

(3) position 3 on June 30, 1971;

(4) position 4 on June 30, 1972;

(5) position 5 on June 30, 1973; and

(6) position 10 on June 30, 2004;

B. positions 6 and 7, each of which shall be filled by a person who is licensed to practice law in this state. These positions shall be filled by appointment of qualified persons by majority vote of all members of the board of commissioners of the state bar of New Mexico, but no member of the board of commissioners shall be appointed. Following initial terms specified in this subsection, these positions shall be filled in the same

manner by qualified persons who serve for four years or less, in such manner that one of the terms expires on June 30 of each even-numbered year. Initial terms begin on July 1, 1968 and expire as follows:

(1) position 6 on June 30, 1970; and

(2) position 7 on June 30, 1972; and

C. positions 8 and 9, each of which shall be filled by a person who is a justice of the supreme court or a judge of the court of appeals or district court and position 11, which shall be filled by a person who is a magistrate court judge. These positions shall be filled by appointment of qualified persons by the supreme court. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that at least one of the terms expires on June 30 of each odd-numbered year. The initial terms for positions 8 and 9 begin on July 1, 1968. The initial term for position 11 begins on July 1, 1999. The terms expire as follows:

(1) position 8 on June 30, 1971;

(2) position 9 on June 30, 1973; and

(3) position 11 on June 30, 2003."

SENATE BILL 449, AS AMENDED

CHAPTER 110

RELATING TO COURTS; PROVIDING FOR A MEDIATION PROGRAM BY PROBATE JUDGES IN MAGISTRATE COURT.

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

Chapter 110 Section 1

Section 1. MAGISTRATE COURTS--AUTHORITY TO CONDUCT A MEDIATION PROGRAM--TRAINING.--

A. If approved by the administrative office of the courts pursuant to Subsection B of this section, a probate judge shall have authority to conduct mediation programs in a magistrate court.

B. The director of the administrative office of the courts may approve a probate judge to exercise the authority conferred in Subsection A of this section if the judicial district for the county in which the magistrate court is located has certified that the probate judge is qualified, by training or experience, to conduct the mediation program.

C. The supreme court shall enact rules necessary for the implementation of this section.

SENATE BILL 462

CHAPTER 111

RELATING TO INSURANCE; AMENDING PROVISIONS OF THE NEW MEXICO INSURANCE CODE PERTAINING TO SURPLUS LINES INSURANCE.

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

Chapter 111 Section 1

Section 1. Section 59A-14-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 243, as amended) is amended to read:

"59A-14-5. SIGNATURE AND SPECIAL ENDORSEMENT OF SURPLUS LINES POLICY.--Every insurance contract procured and delivered as surplus lines insurance pursuant to Chapter 59A, Article l4 NMSA 1978 shall bear the name, address and signature of the surplus lines broker who procured it and have stamped, printed or otherwise displayed prominently in boldface ten-point or larger type either upon its declarations page or by attachment of an endorsement, the form of which may be promulgated by the superintendent, the following: "This policy provides surplus lines insurance by an insurer not otherwise authorized to transact business in New Mexico. This policy is not subject to supervision, review or approval by the superintendent of insurance. The insurance so provided is not within the protection of any guaranty fund law of New Mexico designed to protect the public in the event of the insurer's insolvency."."

Chapter 111 Section 2

Section 2. Section 59A-14-11 NMSA 1978 (being Laws 1991, Chapter 125, Section 17) is amended to read:

"59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS.--

A. The producing broker shall complete, execute and provide to the surplus lines broker an affidavit in substantially the form required by the superintendent, as to the diligent efforts to place the coverage with authorized insurers and the results thereof. The affidavit shall affirm that the insured was expressly advised prior to placement of the insurance and in the insurance policy that:

(1) the surplus lines insurer with which the insurance was to be placed is not an authorized insurer in this state and is not subject to the superintendent's supervision; and

(2) in the event the surplus lines insurer becomes insolvent, claims will not be paid nor will unearned premiums be returned by any New Mexico insurance guaranty fund.

B. Within sixty days after the end of each calendar quarter, the surplus lines broker shall file with the superintendent a copy of each of the producing broker affidavits required by Subsection A of this section and a copy of the policy declarations page of all surplus lines insurance business transacted during the calendar quarter. The surplus lines broker shall preserve the original producing broker affidavits in compliance with Section 59A-14-10 NMSA 1978. The declaration pages shall be confidential and shall not be subject to public inspection. The superintendent's copy of the affidavits shall be open to public inspection. If the producing broker has failed to provide the producing broker affidavit, the surplus lines broker shall at the time of quarterly filing, notify the superintendent of the producing broker's failure to comply.

C. Each surplus lines broker shall, within sixty days after expiration of each calendar quarter, file with the superintendent a statement under the surplus lines broker's oath of all surplus lines insurance business transacted during such calendar quarter. The statement shall be on forms as prescribed and furnished by the superintendent and shall contain such information relative to the surplus lines insurance transaction as the superintendent may reasonably require for the purposes of Chapter 59A, Article 14 NMSA 1978."

Chapter 111 Section 3

Section 3. Section 59A-14-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 250) is amended to read:

"59A-14-12. PREMIUM TAX ON SURPLUS LINE INSURANCE.--

A. Within sixty days after expiration of a calendar quarter the surplus line broker shall pay to the superintendent for the use of the state of New Mexico a tax on gross premiums received, less returned premiums, on surplus line business transacted under the surplus line broker's license during such calendar quarter as shown by the quarterly statement filed with the superintendent as provided under 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. If a surplus line policy covers risks or exposures only partially in this state the tax payable shall be computed upon the proportion of the premium properly allocable to risks or exposures located in this 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 line 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 he finds that the failure or delay in payment arose from excusable mistake or excusable inadvertence."

SENATE BILL 467

CHAPTER 112

RELATING TO HEALTH; AMENDING SECTIONS OF THE CAREGIVERS CRIMINAL HISTORY SCREENING ACT; CLARIFYING DEFINITIONS; ADDING ADDITIONAL DISQUALIFYING CONVICTIONS.

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

Chapter 112 Section 1

Section 1. Section 29-17-4 NMSA 1978 (being Laws 1998, Chapter 68, Section 3) is amended to read:

"29-17-4. DEFINITIONS.--As used in the Caregivers Criminal History Screening Act:

A. "applicant" means a person who seeks and is offered employment or contractual service as a caregiver with a care provider;

B. "caregiver" means a person, not otherwise required to undergo a nationwide criminal history screening by the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider;

C. "care provider" or "provider" means a skilled nursing facility; an intermediate care facility; a care facility for the mentally retarded; a psychiatric facility; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a guardian service provider; a case management entity that provides services to people with developmental disabilities; a private residence that provides personal care, adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or owner; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the state agency on aging that provides respite, companion or personal care services; or programs funded by the children, youth and families department that provide homemaker or adult daycare

services. "Care provider" or "provider" does not include general acute care hospitals, resident care facilities located at or performing services exclusively for any correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings;

D. "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

E. "nationwide criminal history screening" means a criminal history background investigation of an applicant or caregiver through the use of fingerprints collected by the department of public safety and submitted to the federal bureau of investigation, resulting in generation of a nationwide criminal history record for that applicant or caregiver; and

F. "nationwide criminal history record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications system, the department of public safety or the repositories of criminal history information of other states."

Chapter 112 Section 2

Section 2. Section 29-17-5 NMSA 1978 (being Laws 1998, Chapter 68, Section 4) is amended to read:

"29-17-5. CRIMINAL HISTORY SCREENING REQUIRED-- REGULATORY IMPLEMENTATION--APPEALS.--

A. The department of health is authorized to receive an applicant's or caregiver's nationwide criminal history record obtained by the department of public safety as a result of a nationwide criminal history screening pursuant to an applicant's or caregiver's authorization for such nationwide criminal history screening. Providers shall submit a set of fingerprints of applicants and caregivers to the department of health for a nationwide criminal history screening, and the department of public safety shall accept from the department of health such fingerprints for the purpose of conducting a nationwide criminal history screening.

B. The department of health is authorized to promulgate regulations to implement the Caregivers Criminal History Screening Act, including regulations establishing a three-year phased implementation based upon provider type; fingerprint submission procedures; fees; confidentiality; timeframes for an applicant's or caregiver's nationwide

criminal history screening; procedures for clarifying incomplete or confusing criminal history information; provider sanctions for noncompliance; and employment procedures pending the results of the nationwide criminal history screening relating to applicants and caregivers.

C. No caregiver may be employed by a care provider unless the caregiver first has submitted to a request for a nationwide criminal history screening prior to beginning employment in accordance with procedures established by regulation by the departments of health and public safety or unless the caregiver has submitted to a nationwide criminal history screening and has been cleared within the previous twelve months.

D. The following felony convictions disqualify an applicant or caregiver from employment as a caregiver:

(1) homicide;

(2) trafficking controlled substances;

(3) kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;

(5) crimes involving adult abuse, neglect or financial exploitation;

(6) crimes involving child abuse or neglect; or

(7) robbery, larceny, extortion, forgery, embezzlement, credit card fraud or receiving stolen property.

E. Upon receipt by the department of health of the results of the applicant's or caregiver's nationwide criminal history screening, the department of health shall give notice to the submitting care provider whether or not the applicant or caregiver has a disqualifying conviction of a crime specified in Subsection D of this section. No other results of the applicant's or caregiver's nationwide criminal history screening shall be provided to the care provider. Except as provided in Subsection F of this section, a care provider shall not employ an applicant or continue to employ a caregiver whose nationwide criminal history screening record reflects a disqualifying conviction. When the department of health provides notice to the care provider of a disqualifying conviction of a crime specified in Subsection D of this section, it shall also notify the applicant or caregiver, stating with specificity the convictions on which its decision is based and identifying the agency that provided the records.

F. An applicant or caregiver whose nationwide criminal history record, obtained through the applicant's or caregiver's nationwide criminal history screening and other clarifying

endeavors of the department of health, reflects a disqualifying conviction of a crime specified in Subsection D of this section may request from the department of health an administrative reconsideration. The care provider may, in its discretion, continue to employ such person during the pendency of the reconsideration. A care provider may employ the applicant or caregiver if the reconsideration proceeding results in a determination by the department of health that the applicant's or caregiver's nationwide criminal history record inaccurately reflects a disqualifying conviction of a crime specified in Subsection D of this section or that the employment presents no risk of harm to a care recipient or that the conviction does not directly bear upon the applicant's or caregiver's fitness for the employment.

G. The department of health is authorized to adopt regulations for the administrative reconsideration proceeding available to an applicant or caregiver whose nationwide criminal history record reflects a disqualifying conviction. The regulations shall take into account the requirements of the Criminal Offender Employment Act.

H. A care provider shall maintain records evidencing compliance with the requirements of this section with respect to all applicants and caregivers employed on or after May 20, 1998.

I. All criminal history records obtained pursuant to this section by the department of health are confidential. No criminal history records obtained pursuant to this section shall be used for any purpose other than determining whether an applicant or caregiver has a criminal conviction that would disqualify him from employment as a caregiver. Except on court order or with the written consent of the applicant or caregiver, criminal records obtained pursuant to this section and the information contained therein shall not be released or otherwise disclosed to any other person or agency. A person who discloses confidential records or information in violation of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

J. The department of health shall maintain a registry of all applicants who are disqualified from employment or contractual service as caregivers. An applicant's arrest record information shall not be released except upon request of the applicant as provided in the Arrest Record Information Act.

K. A care provider, including its administrators and employees, is not civilly liable to an applicant or a caregiver for a good faith decision to employ, not employ or terminate employment pursuant to the Caregivers Criminal History Screening Act.

L. Failure to comply with the requirements of this section are grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties."

SENATE BILL 483, AS AMENDED

CHAPTER 113

RELATING TO PUBLIC SAFETY; PROHIBITING INTERFERENCE WITH OR INJURY TO ASSISTANCE DOGS; PROVIDING PENALTIES.

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

Chapter 113 Section 1

Section 1. FINDINGS AND PURPOSE--INTERFERENCE WITH ASSISTANCE DOG PROHIBITED--CRIMINAL AND CIVIL PENALTIES.--

A. The legislature finds that unrestrained dogs constitute a danger to assistance dogs and public safety. The purpose of this section is to protect persons with disabilities and assistance dogs from attack by unrestrained dogs.

B. As used in this section, "assistance dog" means a dog that has been or is being trained for persons with a hearing, sight or other physical disability or impairment.

C. It is unlawful for any person, with no legal justification, to:

(1) intentionally interfere with the use of a service dog by harassing or obstructing the service dog user or the service dog; or

(2) intentionally fail or refuse to control his animal, and the animal interferes with or obstructs the service dog user or the service dog.

D. The provisions of this section shall not apply to animals on private property not open to the public.

E. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978. A person convicted under this section may be ordered to pay restitution, including the cost of veterinary bills and replacement and training costs of the service animal, if required as a result of the violation.

F. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978.

G. As used in this section, "Assistance animal" includes an animal recognized as a service animal pursuant to the Americans with Disabilities Act of 1990.

SENATE BILL 498, AS AMENDED

CHAPTER 114

RELATING TO ALCOHOLIC BEVERAGES; PERMITTING LIMITED USE OF LICENSED PREMISES OF A CLUB BY NONPROFIT ORGANIZATIONS FOR FUNDRAISING PURPOSES; DECLARING AN EMERGENCY.

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

Chapter 114 Section 1

Section 1. Section 60-7A-13 NMSA 1978 (being Laws 1981, Chapter 39, Section 79, as amended) is amended to read:

"60-7A-l3. SALES BY CLUBS.--

A. Any club licensed pursuant to the provisions of the Liquor Control Act shall only have the right to sell alcoholic beverages by the drink and wine by the bottle for consumption on the premises.

B. Except as otherwise provided in this section, it is unlawful and grounds for suspension or revocation of its license for a club to:

(1) solicit by advertising or any other means public patronage of its alcoholic beverage facilities. In the event the club solicits public patronage of its other facilities, alcoholic beverages shall not be sold, served or consumed on the premises while the other facilities are being used by or operated for the benefit of the general public, unless the alcoholic beverage facilities are separate from the other facilities and the general public is not permitted to enter any part of the facilities where alcoholic beverages are being sold, served or consumed; or

(2) serve, sell or permit the consumption of alcoholic beverages to persons other than members and their bona fide guests.

C. A club licensed pursuant to the provisions of the Liquor Control Act may allow its facilities, including its licensed premises, to be used, for activities other than its own, no more than two times in a calendar year for fundraising events held by other nonprofit organizations.

D. For the purposes of this section:

(1) "bona fide guest" means a person whose presence in the club is in response to a specific invitation by a member and for whom the member assumes responsibility; and

(2) "member" includes the adult spouse and the children of a member who pays membership dues or of a deceased member who paid membership dues or a member of an official auxiliary or subsidiary group of the club who has been issued a personal identification card in accordance with the rules and regulations of the club."

Chapter 114 Section 2

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

SENATE BILL 504, AS AMENDED

CHAPTER 115

RELATING TO EXTRATERRITORIAL ZONING; PROVIDING FOR ALTERNATES ON THE EXTRATERRITORIAL LAND USE AUTHORITY AND THE EXTRATERRITORIAL LAND USE COMMISSION IN A COUNTY WITH A MUNICIPALITY HAVING A POPULATION OF GREATER THAN TWO HUNDRED THOUSAND PEOPLE.

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

Chapter 115 Section 1

Section 1. Section 3-21-3.2 NMSA 1978 (being Laws 1998, Chapter 42, Section 5) is amended to read:

"3-21-3.2. EXTRATERRITORIAL ZONING IN CLASS A COUNTIES--PROCEDURES.--

A. In a class A county in which a municipality is located that has a population of:

(1) more than three hundred thousand persons, concurrent extraterritorial zoning jurisdiction between that municipality and the county shall be determined by an "extraterritorial land use authority". The extraterritorial land use authority shall have the jurisdiction and powers of an extraterritorial zoning authority and shall carry out its duties related to planning and platting jurisdiction, extraterritorial zoning, subdivision approval and annexation approval or disapproval as provided in the Municipal Code. The extraterritorial land use authority shall consist of four county commissioners appointed by the board of county commissioners and three city councilors or two city councilors and the mayor appointed by the municipality. Alternates to the extraterritorial land use authority shall be appointed by the board of county commissioners from among the remaining county commissioners and by the municipality from among the remaining city councilors. The alternates shall be notified prior to a meeting of the extraterritorial land use authority if an appointed member cannot attend. When replacing a member, an alternate shall have the same duties, privileges and powers as other appointed members; or

(2) three hundred thousand or fewer people, concurrent extraterritorial zoning jurisdiction between that municipality and the county may be determined by an "extraterritorial land use authority" pursuant to ordinances adopted by the municipal and county governing bodies stating that the county or municipality will create an

extraterritorial land use authority with the composition, jurisdiction and powers set forth in Paragraph (1) of this subsection.

B. The extraterritorial zoning commission in a class A county shall be known as the "extraterritorial land use commission" if it is formed by:

(1) a class A county and a municipality that has a population of more than three hundred thousand people and that is located within that class A county; or

(2) a municipality and a class A county that have adopted ordinances pursuant to Paragraph (2) of Subsection A of this section stating that the county and municipality will create an extraterritorial land use authority.

C. The extraterritorial zoning commission shall be composed of five members of the county planning commission appointed by the board of county commissioners and five members of the environmental planning commission of the municipality appointed by the city council. Alternates to the extraterritorial land use commission shall be appointed by the board of county commissioners from the remaining members of the county planning commission and by the municipality from the remaining members of the environmental planning commission, who shall be notified prior to a meeting of the extraterritorial land use commission if an appointed member cannot attend. When replacing a member, the alternate shall have the same duties, privileges and powers as other appointed members.

D. The composition of the extraterritorial land use commission shall not affect the composition of any other extraterritorial zoning commission that may be established in that county with any other municipality.

E. The extraterritorial land use commission shall have the authority to carry out duties related to planning and platting jurisdiction, subdivision and extraterritorial zoning."

SENATE BILL 513, AS AMENDED

CHAPTER 116

RELATING TO EDUCATION; AMENDING SECTIONS OF THE NMSA 1978 TO MAKE ATTENDANCE AT THE NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED UP TO PARENTAL DISCRETION AND TO REQUIRE THE SCHOOL TO COMPLY WITH FEDERAL LAW.

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

Chapter 116 Section 1

Section 1. Section 21-5-2 NMSA 1978 (being Laws 1903, Chapter 2, Section 6, as amended) is amended to read:

"21-5-2. MANAGEMENT OF NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED--CORPORATE POWERS.--

A. The management and control of the New Mexico school for the visually handicapped, the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use and the disbursement and expenditure of all money appropriated by the state or that shall otherwise come into the school's possession shall be vested in a board of five regents, at least one of whom shall be visually handicapped and at least one other of whom shall be the parent of a visually handicapped child.

B. The regents and their successors in office shall constitute a body corporate under the name and style of "the board of regents of the New Mexico school for the visually handicapped". The board has the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure and of causing all things to be done necessary to carry out the provisions of Chapter 21, Article 5 NMSA 1978. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The officers of the board shall be elected in the same manner and possess the same qualifications as the officers of the board of regents of the university of New Mexico.

C. The board of regents of the New Mexico school for the visually handicapped shall comply with provisions of the fourteenth amendment to the United States constitution, the federal Civil Rights of Institutionalized Persons Act and the Individuals with Disabilities Education Act."

Chapter 116 Section 2

Section 2. REPEAL.--Sections 21-5-5 and 21-5-8 NMSA 1978 (being Laws 1915, Chapter 33, Sections 1 and 4, as amended) are repealed.

SENATE BILL 529, AS AMENDED

CHAPTER 117

RELATING TO NURSING MOTHERS; PROTECTING A MOTHER'S RIGHT TO BREASTFEED IN PUBLIC AND PRIVATE LOCATIONS.

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

Chapter 117 Section 1

Section 1. A mother may breastfeed her child in any location, public or private, where the mother is otherwise authorized to be present.

SENATE BILL 545

CHAPTER 118

RELATING TO CRIMINAL LAW; CREATING A CRIMINAL OFFENSE KNOWN AS ESCAPE FROM A COMMUNITY CUSTODY RELEASE PROGRAM; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Chapter 118 Section 1

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

"ESCAPE FROM A COMMUNITY CUSTODY RELEASE PROGRAM.--

A. Escape from a community custody release program consists of a person, excluding a person on probation or parole, who has been lawfully committed to a judicially approved community custody release program, including a day reporting program, an electronic monitoring program, a day detention program or a community tracking program, escaping or attempting to escape from the community custody release program.

B. Whoever commits escape from a community custody release program, when the person was committed to the program for a misdemeanor charge, is guilty of a misdemeanor.

C. Whoever commits escape from a community custody release program, when the person was committed to the program for a felony charge, is guilty of a felony."

Chapter 118 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 546, AS AMENDED

CHAPTER 119

RELATING TO ALCOHOLIC BEVERAGES; CREATING JOB OPPORTUNITIES; ALLOWING MINORS NINETEEN YEARS OF AGE OR OLDER TO SELL OR SERVE ALCOHOLIC BEVERAGES IN RESTAURANTS AND CLUBS.

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

Chapter 119 Section 1

Section 1. Section 60-7B-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 91, as amended) is amended to read:

"60-7B-11. EMPLOYMENT OF MINORS.--

A. Except as provided in Subsection B of this section, it is a violation of the Liquor Control Act for any person licensed pursuant to the provisions of the Liquor Control Act or for any employee, agent or lessee of that person knowingly to employ or use the service of any minor in the sale and service of alcoholic beverages.

B. A person holding a dispenser's, restaurant or club license may employ persons nineteen years of age or older to sell or serve alcoholic beverages in an establishment that is held out to the public as a place where meals are prepared and served and the primary source of revenue is food, and where the sale or consumption of alcoholic beverages is not the primary activity, except that a person under the age of 21 years of age shall not be employed as a bartender."

SENATE BILL 10, AS AMENDED

CHAPTER 120

RELATING TO CRIMINAL LAW; INCREASING THE CRIMINAL PENALTY FOR IMPERSONATING A PEACE OFFICER; AMENDING AND REPEALING SECTIONS OF THE CRIMINAL CODE.

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

Chapter 120 Section 1

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

"IMPERSONATING A PEACE OFFICER.--

A. Impersonating a peace officer consists of:

(1) without due authority exercising or attempting to exercise the functions of a peace officer; or

(2) pretending to be a peace officer with the intent to deceive another person.

B. Whoever commits impersonating a peace officer is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.

C. As used in this section, "peace officer" means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes."

Chapter 120 Section 2

Section 2. REPEAL.--Section 30-27-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 27-2) is repealed.

Chapter 120 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR SENATE BILL 65

CHAPTER 121

RELATING TO LAW ENFORCEMENT; REQUIRING CRIMINAL HISTORY SCREENING FOR APPLICANTS FOR THE NEW MEXICO MOUNTED PATROL; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Chapter 121 Section 1

Section 1. A new section of Chapter 29, Article 6 NMSA 1978 is enacted to read:

"MOUNTED PATROL--APPLICANTS--CRIMINAL HISTORY

SCREENING--DENIAL OF COMMISSION.--

A. As used in this section:

(1) "criminal record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising from them, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the databases of the federal bureau of investigation, the national law enforcement telecommunications system, the department of public safety or the repositories of criminal history information of other states; and

(2) "criminal history screening" means a criminal history background investigation of an applicant for the New Mexico mounted patrol conducted by using fingerprints collected by the department of public safety or a local law enforcement agency and submitted to the federal bureau of investigation.

B. The New Mexico mounted patrol shall perform a criminal history screening on all applicants for mounted patrol. If an applicant has a criminal record, his application for a commission in the mounted patrol may be denied. If an applicant has a felony conviction or a conviction for a misdemeanor involving moral turpitude, his application for a commission in the mounted patrol shall be denied.

C. The chief of the New Mexico state police shall determine whether to grant a commission to an applicant who has a criminal record that did not result in conviction of a felony or a misdemeanor involving moral turpitude. The chief's decision to deny an application for a commission in the mounted patrol is final and may not be appealed.

D. An applicant for the New Mexico mounted patrol shall be fingerprinted and the applicant shall provide two fingerprint cards or the equivalent electronic fingerprints to the mounted patrol to assist the mounted patrol in conducting a criminal history screening of the applicant. The applicant shall pay the cost of the criminal history screening. The mounted patrol shall not charge the applicant more than the actual cost of the nationwide criminal history screening."

Chapter 121 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 92, AS AMENDED

CHAPTER 122

RELATING TO MOTOR VEHICLES; REQUIRING A LICENSE FOR A MOTOR VEHICLE TITLE SERVICE COMPANY TO ENGAGE IN BUSINESS; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 122 Section 1

Section 1. Section 66-1-4.17 NMSA 1978 (being Laws 1990, Chapter 120, Section 18, as amended) is amended to read:

"66-1-4.17. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "tank vehicle" means a motor vehicle that is designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis and that has either a gross vehicle weight rating of twenty-six thousand one or more pounds or is used in the transportation of hazardous materials requiring placarding of the vehicle under applicable law;

B. "taxicab" means a motor vehicle used for hire in the transportation of persons, having a normal seating capacity of not more than seven persons;

C. "through highway" means every highway or portion thereof at the entrance to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing it when stop signs are erected as provided in the Motor Vehicle Code;

D. "title service company" means a person, other than the department, an agent of the department, a licensed dealer or the motor transportation division, who for consideration issues temporary registration plates or prepares and submits to the department on behalf of others, applications for registration of or title to motor vehicles;

E. "traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together using any highway for purposes of travel;

F. "traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed;

G. "traffic safety bureau" means the traffic safety bureau of the state highway and transportation department;

H. "trailer" means any vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no significant part of its weight rests upon the towing vehicle;

I. "transporter of manufactured homes" means a commercial motor vehicle operation engaged in the business of transporting manufactured homes from the manufacturer's location to the first dealer's location. A "transporter of manufactured homes" may or may not be associated with or affiliated with a particular manufacturer or dealer;

J. "travel trailer" means a trailer that exceeds neither a width of eight feet nor a length of forty feet, when equipped for the road, and includes recreational travel trailers and camping trailers;

K. "trial court" means the magistrate, municipal or district court that tries the case concerning an alleged violation of a provision of the Motor Vehicle Code;

L. "truck" means every motor vehicle designed, used or maintained primarily for the transportation of property;

M. "truck camper" means a camping body designed to be loaded onto, or affixed to, the bed or chassis of a truck. This camping body, when combined with a truck or truck cab and chassis, even though not attached permanently, becomes a part of the motor vehicle and together they are a recreational unit to be known as a "truck camper"; there are three general types of truck campers:

(1) "slide-in camper" means a camping body designed to be loaded onto and unloaded from the bed of a pickup truck;

(2) "chassis-mount camper" means a camping body designed to be affixed to a truck cab and chassis; and

(3) "pickup cover" or "camper shell" means a camping body designed to provide an all-weather protective enclosure over the bed of a pickup truck and to be affixed thereto; and

N. "truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."

Chapter 122 Section 2

Section 2. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 214, as amended) is amended to read:

"66-4-1. DEALERS, WRECKERS, WHOLESALERS AND DISTRIBUTORS OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED--PRESUMPTION OF CONDUCTING BUSINESS.--

A. No person, unless licensed to do so by the department, shall carry on or conduct the active trade or business of:

(1) a dealer in motor vehicles of a type subject to registration pursuant to the Motor Vehicle Code;

(2) wrecking or dismantling any vehicle for the resale of the parts. Any person possessing three or more wrecked, dismantled or partially wrecked or dismantled vehicles and selling or offering for sale a used vehicle part and who regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed to be conducting the business of wrecking or dismantling a vehicle for the resale of the parts;

(3) wholesaling of vehicles. Any person who sells or offers for sale vehicles of a type subject to registration in this state, to a vehicle dealer licensed pursuant to the Motor Vehicle Code or who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer shall be presumed to be conducting the business of wholesaling. Provided, however, that if any such person also sells a vehicle at retail, he shall be deemed to be a dealer and is subject to the dealer-licensing provisions of the Motor Vehicle Code;

(4) distributing of vehicles. Any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer shall be presumed to be conducting the business of distributing vehicles; or

(5) a title service company. Any person who for consideration prepares or submits applications for the registration of or title to vehicles shall be presumed to be engaging in the business of a title service company.

B. Application for a dealer, wholesaler, distributor or wrecker of vehicles license or a title service company license shall be made upon the form prescribed by the department and shall contain the name and address of the applicant and, when the applicant is a partnership, the name and address of each partner or, when the applicant is a corporation, the names of the principal officers of the corporation and the state in which incorporated and the place where the business is to be conducted and the nature of the business and such other information as may be required by the department. Every application shall be verified by the oath or affirmation of the applicant, if an individual, or, in the event an applicant is a partnership or corporation, by a partner or officer of the partnership or corporation. Every application shall be accompanied by the fee required by law.

C. Any metal processor or dealer in scrap who dismantles, processes for scrap, shreds, compacts, crushes or otherwise destroys more than three vehicles within a period of one year shall be licensed pursuant to the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978.

D. In order to ensure that a dealer, wholesaler, distributor, wrecker of vehicles or title service company complies with this section, the secretary may apply to a district court of this state to have a person operating without a license as required by this section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined from engaging in business until that person complies with the requirements of licensing as provided by this section and the bonding requirements of Section 66-4-7 NMSA 1978.

E. Upon application to a court for the issuance of an injunction against an unlicensed person, the court may forthwith issue an order temporarily restraining that person from doing business. The court shall hear the matter within three days and, upon a showing by the preponderance of the evidence that the person is operating without a license and that the person has been given notice of the hearing as required by law, the court may enjoin the person from engaging in business in New Mexico until the person ceases to be unlicensed. Upon issuing an injunction, the court may also order the business premises of the person to be sealed by the sheriff and may allow the person access thereto only upon approval of the court.

F. No temporary restraining order shall be issued against a person who has complied with the provisions of this section. Upon a showing to the court by a person against whom a temporary restraining order has been issued that he has a license in accordance with the provisions of this section, the court shall dissolve or set aside the temporary restraining order."

Chapter 122 Section 3

Section 3. Section 66-4-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 215, as amended) is amended to read:

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

A. The department, upon receiving application accompanied by the required fee and when satisfied that the applicant is of good character and, so far as can be ascertained, has complied with and will comply with the laws of this state with reference to the registration of vehicles and certificates of title and the provisions of the Motor Vehicle Code, shall issue to the applicant a license which entitles the licensee to carry on and conduct the business of a dealer, wrecker of vehicles or title service company, as the case may be, during the period for which the license is issued. The license shall expire on the last day of the period for which it is issued and may be renewed upon application and payment of the fee required by law.

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

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

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

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

D. The department is authorized to establish a staggered system for licensing of dealers, wholesalers, distributors and wreckers of vehicles and of title service companies, provided that any license issued shall expire on the last day of a month. During the initial adjustment period of July 1, 1999 through December 31, 2000, the department may issue licenses for periods less than twelve months or up to twenty-one months to establish a more uniform monthly pattern of expirations. For any license issued for a period other than twelve months during the initial adjustment period, the fee imposed pursuant to Section 66-6-18 NMSA 1978 shall be adjusted accordingly. After the initial adjustment period, licenses issued shall be issued for a period of twelve months."

Chapter 122 Section 4

Section 4. Section 66-4-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 217) is amended to read:

"66-4-4. CRIMINAL OFFENDER'S CHARACTER EVALUATION.--The provisions of the Criminal Offender Employment Act govern any consideration of criminal records required or permitted by Sections 66-4-1 through 66-4-9 NMSA 1978."

Chapter 122 Section 5

Section 5. Section 66-4-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 218) is amended to read:

"66-4-5. RECORDS OF PURCHASES, OF SALES AND OF VEHICLES DISMANTLED.--

A. Every dealer and wrecker of vehicles licensee shall maintain a record, in form as prescribed by the department of:

(1) every vehicle of a type subject to registration pursuant to the provisions of the Motor Vehicle Code that is bought, sold or exchanged by the licensee or received by the licensee for sale or exchange;

(2) every motor vehicle body, chassis or engine which is sold or otherwise disposed of; and

(3) every such vehicle which is bought or otherwise acquired and dismantled by the licensee.

B. Every record required to be maintained pursuant to Subsection A of this section shall state the name and address of the person from whom the vehicle was purchased or acquired and the date of the purchase and the name and address of the person to whom the vehicle or the motor vehicle body, chassis or engine was sold or otherwise disposed of and the date of the sale or disposition and a sufficient description of every vehicle or motor vehicle body, chassis or engine by name and identifying numbers sufficient to identify the vehicle or motor vehicle body, chassis or engine.

C. Every title service company licensee shall maintain a record of:

(1) every temporary registration plate issued;

(2) every title and registration application accepted for processing; and

(3) any other information prescribed by the department.

D. Every record required to be maintained pursuant to the provisions of this section shall be retained for a period of three years from the end of the year in which the record

was created and shall be open to inspection by any peace officer or officer of the department during reasonable business hours. If the licensee fails to maintain the records required or to permit their inspection during reasonable business hours, the license becomes invalid."

Chapter 122 Section 6

Section 6. Section 66-4-6 NMSA 1978 (being Laws 1978, Chapter 35, Section 219) is amended to read:

"66-4-6. PLACE OF BUSINESS.--

A. No license shall be issued to a dealer or wrecker of vehicles unless an established place of business as defined in the Motor Vehicle Code is maintained by the dealer or wrecker of vehicles. Each license to carry on or conduct the business of a dealer or wrecker of vehicles becomes invalid when the licensee fails to maintain an established place of business as defined in the Motor Vehicle Code.

B. No license shall be issued to a title service company unless that company maintains a physical place of business accessible to the public and provides the department with the physical address of that place of business. Each such place of business shall be open to inspection by a peace officer or the department during reasonable business hours. The license of the title service company may be suspended or canceled if the title service company fails to maintain a place of business accessible to the public or does not allow inspection during reasonable business hours by a peace officer or the department."

Chapter 122 Section 7

Section 7. Section 66-4-7 NMSA 1978 (being Laws 1978, Chapter 35, Section 220, as amended) is amended to read:

"66-4-7. DEALERS, WHOLESALERS, DISTRIBUTORS AND WRECKERS OF VEHICLES--TITLE SERVICE COMPANIES--DEALERS OF MOTORCYCLES ONLY--BOND.--

A. Before issuance of any dealer's license, wholesaler's license, distributor's license, wrecker of vehicles license or title service company license, the applicant shall procure and file with the department a corporate surety bond in the amount of fifty thousand dollars ($50,000). An applicant for a dealer's license for motorcycles only shall procure and file with the department a corporate surety bond in the amount of twelve thousand five hundred dollars ($12,500). The corporate surety shall be licensed by the public regulation commission or a successor entity to do business in this state as a surety and the form of the bond shall be approved by the attorney general. The bond shall be payable to the state for the use and benefit of the purchaser and his vendees, conditioned upon payment of any loss, damage and expense sustained by the

purchaser or his vendees, or both, by reason of failure of the title of the vendor, by any fraudulent misrepresentations or by any breach of warranty as to freedom from liens on the motor vehicle or motorcycle sold by the dealer, wholesaler, distributor, dealer of motorcycles only or wrecker of vehicles. The bond shall be continuous in form and limited to the payment of fifty thousand dollars ($50,000) in total aggregate liability on a dealer's license, wholesaler's license, distributor's license, wrecker of vehicles license or a title service company license and twelve thousand five hundred dollars ($12,500) on a dealer's license for motorcycles only.

B. No applicant for a dealer's license, wholesaler's license, distributor's license or dealer's license for motorcycles only who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of wrecking or dismantling motor vehicles or motorcycles. Conversely, no applicant for a wrecker of vehicles license who files bond in the amount and form specified in Subsection A of this section shall be required to file any additional bond to conduct a business of dealer, distributor, wholesaler or dealer of motorcycles only.

C. In lieu of the bond required in this section, the dealer, wholesaler, distributor, wrecker of vehicles or dealer of motorcycles only may elect to file with the department the equivalent amount of cash or bonds of the United States or New Mexico or of any political subdivision of the state.

D. The license of a dealer, wholesaler, distributor or wrecker of vehicles or of a title service company may be suspended or canceled if the dealer, wholesaler, distributor, wrecker of vehicles or title service company fails to have in effect the required bond or other security."

Chapter 122 Section 8

Section 8. Section 66-4-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 221, as amended) is amended to read:

"66-4-8. EXEMPTIONS FROM LICENSING AND BOND PROVISIONS.--The provisions of Sections 66-4-1 through 66-4-7 NMSA 1978 requiring dealers, wholesalers and distributors of motor vehicles and wreckers of vehicles to be licensed and post a bond do not apply to persons who deal in boats or vessels, off-highway motor vehicles, recreational vehicles that are designed to be towed by a motor vehicle, trailers, semitrailers, pole trailers and trailers designed to transport boats, vessels or off-highway motor vehicles and who do not deal in other motor vehicles of a type subject to registration."

Chapter 122 Section 9

Section 9. Section 66-6-18 NMSA 1978 (being Laws 1978, Chapter 35, Section 353, as amended) is amended to read:

"66-6-18. LICENSE FEE FOR DEALERS, WHOLESALERS, DISTRIBUTORS AND WRECKERS OF VEHICLES AND TITLE SERVICE COMPANIES.--For a license to do business as a dealer, wholesaler, distributor or wrecker of vehicles or any combination of the foregoing or as a title service company, there shall be paid a fee of fifty dollars ($50.00) for each license year or portion thereof."

Chapter 122 Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 122

CHAPTER 123

RELATING TO DOMESTIC AFFAIRS; PROVIDING FOR A BINDING ARBITRATION OPTION DURING A DISSOLUTION OF MARRIAGE PROCEEDING; ENACTING A SECTION OF THE NMSA 1978.

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

Chapter 123 Section 1

Section 1. A new section of Chapter 40, Article 4 NMSA 1978 is enacted to read:

"BINDING ARBITRATION OPTION--PROCEDURE.--

A. Parties to an action for divorce, separation, custody or time-sharing, child support, spousal support, marital property and debt division or attorney fees related to such matters, including any post-judgment proceeding, may stipulate to binding arbitration by a signed agreement that provides for an award with respect to one or more of the following issues:

(1) valuation and division of real and personal property;

(2) child support, custody, time-sharing or visitation;

(3) spousal support;

(4) costs, expenses and attorney fees;

(5) enforceability of prenuptial and post-nuptial agreements;

(6) determination and allocation of responsibility for debt as between the parties;

(7) any civil tort claims related to any of the foregoing; or

(8) other contested domestic relations matters.

B. A court may not order a party to participate in arbitration except to the extent a party has agreed to participate pursuant to a written arbitration agreement. When the party involved is a minor, then his parent must consent to arbitration. When the party involved is a minor with a guardian ad litem, the guardian ad litem must provide written consent. When the party involved is a minor without a guardian ad litem, then in order for arbitration to proceed the court must find that arbitration is in the best interest of the minor.

C. Arbitration pursuant to this section shall be heard by one or more arbitrator. The court shall appoint an arbitrator agreed to by the parties if the arbitrator consents to the appointment.

D. If the parties have not agreed to an arbitrator, the court shall appoint an arbitrator who:

(1) is an attorney in good standing with the state bar of New Mexico;

(2) has practiced as an attorney for not less than five years immediately preceding the appointment and actively practiced in the area of domestic relations during three of those five years. Any period of time during which a person serves as a judge, special master or child support hearing officer is considered as actively practicing in the area of domestic relations; or

(3) is another professional licensed and experienced in the subject matter that is the area of the dispute.

E. An arbitrator appointed pursuant to this section is immune from liability in regard to the arbitration proceeding to the same extent as the judge who has jurisdiction of the action that is submitted to arbitration.

F. Objections to the qualifications of an arbitrator must be raised in connection with the appointment by the court or they are waived. The court will permit parties to raise objections based on qualifications within ten days of appointment of an arbitrator. Parties who agree on an arbitrator waive objections to his qualifications.

G. An arbitrator appointed pursuant to this section:

(1) shall hear and make an award on each issue submitted for arbitration pursuant to the arbitration agreement subject to the provisions of the agreement; and

(2) has all of the following powers and duties:

(a) to administer an oath or issue a subpoena as provided by court rule;

(b) to issue orders regarding discovery proceedings relative to the issues being arbitrated, including appointment of experts; and

(c) to allocate arbitration fees and expenses between the parties, including imposing a fee or expense on a party or attorney as a sanction for failure to provide information, subject to provisions of the arbitration agreement.

H. An arbitrator, attorney or party in an arbitration proceeding pursuant to this section shall disclose in writing any circumstances that may affect an arbitrator's impartiality, including, bias, financial interests, personal interests or family relationships. Upon disclosure of such a circumstance, a party may request disqualification of the arbitrator. If the arbitrator does not withdraw within seven days after a request for disqualification, the party may file a motion for disqualification with the court.

I. If the court finds that the arbitrator is disqualified, the court may appoint another arbitrator, subject to the provisions of the arbitration agreement.

J. As soon as practicable after the appointment of the arbitrator, the parties and attorneys shall confer with the arbitrator to consider all of the following:

(1) scope of the issues submitted;

(2) date, time and place of the hearing;

(3) witnesses, including experts, who may testify;

(4) appointment of experts and a schedule for exchange of expert reports or summary of expert testimony; and

(5) subject to the provisions of Subsection K of this section, exhibits, documents or other information each party considers material to the case and a schedule for production or exchange of the information. An objection not made before the hearing to production or lack of production of information is waived.

K. The arbitrator shall order reasonable access to information for each party that is material to the arbitration issues prior to the hearing, including the following:

(1) a current complete sworn financial disclosure statement, when financial matters are at issue;

(2) if a court has issued an order concerning an issue subject to arbitration, a copy of the order;

(3) any relevant documents related to the arbitration issues defined by the arbitrator;

(4) proposed award by each party for each issue subject to arbitration; and

(5) expert opinions of experts to be used by either party or appointed by the arbitrator.

L. Except as provided by this section, court rule or the arbitration agreement, a record shall not ordinarily be made of an arbitration hearing pursuant to this section unless either party requests it. If a record is not required, an arbitrator may make a record to be used only by the arbitrator to aid in reaching the decision.

M. Unless waived by the parties, a record shall be made of that portion of the hearing that concerns child custody, visitation or time-sharing.

N. The arbitration agreement may set forth any standards on which an award should be based, including the law to be applied. An arbitration agreement shall provide that in deciding child support issues, the arbitrator shall apply Section 40-4-11.1 NMSA 1978 when setting or modifying a child support order.

O. Unless otherwise agreed to by the parties and arbitrator in writing or on the record, the arbitrator shall issue the written award on each issue within sixty days after the end of the hearing and after receipt of proposed findings of fact and conclusions of law if requested by the arbitrator.

P. If the parties reach an agreement regarding child custody, time-sharing or visitation, the agreement shall be placed on the record by the parties under oath and shall be included in the arbitrator's written award.

Q. The arbitrator retains jurisdiction to correct errors or omissions in an award upon motion by a party to the arbitrator within twenty days after the award is issued or upon the arbitrator's own motion. Another party to the arbitration may respond to the motion within seven days after the motion is made. The arbitrator shall make a decision on the motion within seven days after the expiration of the response time period.

R. The court shall enforce an arbitrator's award or other order issued pursuant to this section in the same manner as an order issued by the court. A party may make a motion to the court to enforce an arbitrator's award or order.

S. Any party in an action that was submitted to arbitration pursuant to this section shall file with the court a stipulated order, or a motion to enforce the award within twenty-one days after the arbitrator's award is issued unless otherwise agreed to by the parties in writing or unless the arbitrator or court grants an extension.

T. If a party applies to the court for vacation of an arbitrator's award in binding arbitration issued pursuant to this section that concerns child custody, time-sharing or visitation, the court shall review the award based only upon the record of the arbitration hearing and factual matters that have arisen since the arbitration hearing that are relevant to the claim. The court may vacate an award of custody, time-sharing or visitation made in

binding arbitration if the court finds that circumstances have changed since issuance of the award that are adverse to the best interests of the child, upon a finding that the award will cause harm or be detrimental to a child, or pursuant to Subsections U and V of this section. An arbitration agreement may provide a broader scope of review of custody, time-sharing or visitation issues by the court, and such review will apply if broader than this section.

U. If a party applies to the court for vacation or modification of an arbitrator's award issued pursuant to this section, the court shall review the award only as provided in Subsections T and V of this section.

V. If a party applies under this section, the court may vacate, modify or correct an award under any of the following circumstances:

(1) the award was procured by corruption, fraud or other undue means;

(2) there was evident partiality by an arbitrator, or misconduct prejudicing a party's rights;

(3) the arbitrator exceeded his powers; or

(4) the arbitrator refused to postpone the hearing on a showing of sufficient cause or refused to hear evidence substantial and material to the controversy.

W. An application to vacate an award on grounds stated in Subsections U and V of this section shall be decided by the court. If an award is vacated on grounds stated in Paragraph (3) or (4) of Subsection V of this section, the court may order a rehearing before the arbitrator who made the award when both parties consent to the rehearing before the arbitrator who made the award.

X. An appeal from an arbitration award pursuant to this section that the court confirms, vacates, modifies or corrects shall be taken in this same manner as from an order or judgment in other domestic relations actions.

Y. No arbitrator may decide issues of a criminal nature or make decisions on petitions pursuant to the Family Violence Protection Act."

SENATE BILL 258, AS AMENDED

CHAPTER 124

RELATING TO CHARITIES; REQUIRING REGISTRATION, REPORTING AND STANDARDS OF CONDUCT FOR CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUNDRAISERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 124 Section 1

Section 1. Section 57-22-1 NMSA 1978 (being Laws 1983, Chapter 140, Section 1) is amended to read:

"57-22-1. SHORT TITLE.--Chapter 57, Article 22 NMSA 1978 may be cited as the "Charitable Solicitations Act"."

Chapter 124 Section 2

Section 2. Section 57-22-2 NMSA 1978 (being Laws 1983, Chapter 140, Section 2) is amended to read:

"57-22-2. PURPOSE.--The purpose of the Charitable Solicitations Act is to authorize the attorney general to monitor, supervise and enforce the charitable purposes of charitable organizations and regulate professional fundraisers operating in this state."

Chapter 124 Section 3

Section 3. Section 57-22-3 NMSA 1978 (being Laws 1983, Chapter 140, Section 3) is amended to read:

"57-22-3. DEFINITIONS.--As used in the Charitable Solicitations Act:

A. "charitable organization" means any entity 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)(3) of the Internal Revenue Code of 1986, as amended, or identifies itself to the public as having a charitable purpose;

B. "charitable purpose" means a benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic or other eleemosynary objective or an activity conducted in support of or in the name of law enforcement officers, firefighters or other persons who protect public safety;

C. "contribution" means the promise, grant or pledge of any money, credit or property of any kind or value provided to a charitable organization in response to a solicitation, but does not include program service revenue or bona fide membership fees, dues or assessments; provided that bona fide membership fees, dues or assessments do not include contributions made in exchange for membership in a charitable organization unless membership confers rights and benefits in addition to receiving literature of the charitable organization;

D. "educational institution" means:

(1) an entity organized and operated primarily as a school, college or other instructional institution with a defined curriculum, student body and faculty, conducting classes on a regular basis; and

(2) auxiliary entities, including parent- teacher organizations, booster and support clubs that support, encourage or promote a school, college or other instructional institution and its defined curriculum, student body, faculty, facilities or activities;

E. "professional fundraiser" means a person that solicits or employs or directs others to solicit contributions from the public on behalf of a charitable organization in exchange for compensation and has custody or control of the contributions; provided that "professional fundraiser" does not include a director, officer, bona fide employee or salaried officer, volunteer, attorney, accountant or investment counselor of a charitable organization;

F. "professional fundraising counsel" means a person that provides services or employs or directs others to provide services for compensation to a charitable organization in the solicitation of contributions, including managing or preparing materials to be used in conjunction with any solicitation; provided that the person does not:

(1) directly solicit contributions; or

(2) receive, have access to or control any contribution received in response to the solicitation; provided further that "professional fundraising counsel" does not include a director, officer, bona fide employee or salaried officer, volunteer, attorney, accountant or investment counselor of a charitable organization;

G. "religious organization" means a church, organization or group organized for the purpose of divine worship or religious teaching or other specific religious activity or any other organization that is formed in association with or to primarily encourage, support or promote the work, worship, fellowship or teaching of the church, organization or group; and

H. "solicit" or "solicitation" means any communication requesting a contribution or offering an opportunity to participate in a game of chance, raffle or similar event with the representation that the contribution or participation will support a charitable purpose, and includes:

(1) any verbal request made in person or by telephone, radio, television, electronic communication or other media;

(2) any written or published request mailed, sent, delivered, circulated, distributed, posted in a public place, advertised or communicated through any medium to the public;

(3) any sale or attempt to sell a good or service; and

(4) any invitation to attend an assembly, event, exhibition, performance or social gathering of any kind.

A contribution is not required for a solicitation to have occurred, and "solicit" or "solicitation" does not include direct grants or allocation of funds received or solicited from any affiliated fundraising organization by a member agency or unsolicited contributions received from any individual donor, foundation, trust, governmental agency or other source, unless such contributions are received in conjunction with a solicitation drive."

Chapter 124 Section 4

Section 4. Section 57-22-4 NMSA 1978 (being Laws 1983, Chapter 140, Section 4) is amended to read:

"57-22-4. APPLICATION OF ACT.--

A. The Charitable Solicitations Act shall not apply to a religious organization, even if it is a charitable organization.

B. Exempt from the registration and reporting requirements of the Charitable Solicitations Act are:

(1) educational institutions and organizations defined in Section 6-5A-1 NMSA 1978; and

(2) persons soliciting for an individual or group that has suffered a medical or other catastrophe and:

(a) the individual or group is identified by name at the time of the solicitation;

(b) the purpose for the solicited contribution is clearly stated; and

(c) the gross contributions collected, without any deductions for or by the solicitor or any other person, are deposited directly to an account in the name of the individual or group in a local federally insured financial institution established for that sole purpose and solely used for the direct benefit of the named individual or group as beneficiary.

C. The Charitable Solicitations Act shall apply to charitable organizations and professional fundraisers."

Chapter 124 Section 5

Section 5. Section 57-22-5 NMSA 1978 (being Laws 1983, Chapter 140, Section 5) is amended to read:

"57-22-5. ATTORNEY GENERAL TO MAINTAIN REGISTER OF CHARITABLE ORGANIZATIONS AS PUBLIC RECORD.--The attorney general shall establish and maintain a register of all documents filed by charitable organizations in accordance with the Charitable Solicitations Act. The register shall be open to public inspection except that the attorney general may withhold from public inspection documents or information obtained in the course of an investigation undertaken pursuant to the provisions of that act or that otherwise may be withheld from public inspection by law."

Chapter 124 Section 6

Section 6. Section 57-22-6 NMSA 1978 (being Laws 1983, Chapter 140, Section 6, as amended) is amended to read:

"57-22-6. FILING OF REQUIRED DOCUMENTS.--

A. A charitable organization existing, operating or soliciting in the state, unless exempted by Section 57-22-4 NMSA 1978, shall register with the attorney general on a form provided by the attorney general; correct any deficiencies in its registration upon notice of deficiencies provided by the attorney general and provide a copy of its IRS Form 1023 or IRS Form 1024 application for exempt status with its registration.

B. The attorney general shall notify each charitable organization required to register within ten business days of his receipt of the registration form of any deficiencies in the registration and may make rules in accordance with the State Rules Act, as are necessary for the proper administration of this section, including:

(1) requirements for filing additional information, including disclosure of professional fundraising counsel retained by the charitable organization; and

(2) provisions for suspending the filing of reports or granting an exemption from the registration and reporting requirements of this section for a charitable organization subject to audit, registration, charter or other requirements of a statewide, regional or national association and if it is determined that such reports or registration is not necessary for the protection of the public interest.

C. In addition to any other reporting requirements pursuant to the Charitable Solicitations Act, every charitable organization that has received tax-exempt status pursuant to Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, and is required to file a form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file that form and the accompanying schedule A annually with the office of the attorney general up to six months following the close of the charitable organization's fiscal year. Extensions of time for filing may be allowed at the discretion of the attorney general for good cause shown. Such forms shall be public records and available for public inspection. Organizations that do not file a form 990, 990EZ or 990PF pursuant to the Internal Revenue Code of 1986, as amended, shall file an annual report, under oath, on the form provided by the attorney

general for that purpose. A charitable organization that received total revenue in excess of five hundred thousand dollars ($500,000) shall be audited by an independent certified public accountant. Audits shall be performed in accordance with generally acceptable accounting principles. A charitable organization shall correct any deficiencies in an annual report upon notice of deficiencies provided by the attorney general.

D. A charitable organization that fails to register before a solicitation is made or fails to timely file its tax filings with the attorney general pursuant to Subsection C of this section may be assessed a late filing fee of one hundred dollars ($100).

E. The attorney general may accept information filed by a charitable organization with another state or the federal government in lieu of the registration and reporting requirements of the Charitable Solicitations Act if such information is determined by the attorney general to be in substantial compliance with the registration and reporting requirements of that act."

Chapter 124 Section 7

Section 7. Section 57-22-7 NMSA 1978 (being Laws 1983, Chapter 140, Section 7) is amended to read:

"57-22-7. RESTRICTION ON USE OF FACT OF FILING IN SOLICITATION.--No solicitation for charitable purposes shall use the fact or requirement of registration or of the filing of any report with the attorney general pursuant to the Charitable Solicitations Act with the intent to cause or in a manner tending to cause any person to believe that the solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied or the person or organization conducting it has been or will be in any way endorsed, sanctioned or approved by the attorney general or any governmental agency or office."

Chapter 124 Section 8

Section 8. Section 57-22-8 NMSA 1978 (being Laws 1983, Chapter 140, Section 8) is amended to read:

"57-22-8. DISCLOSURE OF FUNDRAISING COSTS.--

A. All charitable organizations subject to the Charitable Solicitations Act shall disclose upon request the percentage of the funds solicited that are spent on the costs of fundraising. For purposes of this section, costs of fundraising shall include all money directly expended on fundraising and that portion of all administrative expenses and salaries of the charitable organization attributable to fundraising activities.

B. Whenever a solicitation on behalf of a charitable organization subject to the Charitable Solicitations Act is undertaken by a professional fundraiser, the professional fundraiser shall disclose that fact to prospective contributors."

Chapter 124 Section 9

Section 9. Section 57-22-9 NMSA 1978 (being Laws 1983, Chapter 140, Section 9) is amended to read:

"57-22-9. AUTHORITY OF THE ATTORNEY GENERAL.--

A. The attorney general may, on behalf of the state, examine and investigate any charitable organization subject to the Charitable Solicitations Act to ascertain the conditions of its affairs and to what extent, if at all, it fails to comply with the trusts that it has assumed or if it has departed from the purposes for which it was formed. In the case of failure or departure, the attorney general may institute, in the name of the state, a proceeding necessary to correct the noncompliance or departure by any remedy available under the common law.

B. The attorney general may, in the name of the state, seek injunctive relief, civil penalties, financial accounting or restitution from any person who has failed to comply with the registration, filing or disclosure provisions of the Charitable Solicitations Act or who has otherwise violated the provisions of that act.

C. The attorney general, in the name of the state, may initiate appropriate proceedings to seek compliance with the provisions of the Charitable Solicitations Act and with any rules promulgated by the attorney general pursuant to that act. The attorney general may promulgate rules for the proper administration of that act.

D. Nothing in this section shall be construed to preclude a person or group of persons from asserting a private cause of action against a charitable organization or professional fundraiser."

Chapter 124 Section 10

Section 10. Section 57-22-10 NMSA 1978 (being Laws 1983, Chapter 140, Section 10) is amended to read:

"57-22-10. STANDARD OF CARE.--All officers, directors, managers, trustees, professional fundraisers, professional fundraising counsel or other persons having access to the money of a charitable organization intended for use for charitable purposes shall be held to the standard of care defined for fiduciary trustees under common law."

Chapter 124 Section 11

Section 11. Section 57-22-11 NMSA 1978 (being Laws 1983, Chapter 140, Section 11) is amended to read:

"57-22-11. EXEMPTIONS FROM STATE AND LOCAL TAXATION.--Every officer, agency, board or commission of this state, or political subdivision of this state receiving applications for exemption from taxation shall provide to the attorney general copies of all the applications, supporting documents and official responses."

Chapter 124 Section 12

Section 12. A new section of the Charitable Solicitations Act is enacted to read:

"PROFESSIONAL FUNDRAISERS--REGISTRATION.--

A. Professional fundraisers shall, before entering into a contract with any charitable organization, except a religious organization, to solicit for or on its behalf:

(1) register with the attorney general on a form provided by the attorney general;

(2) file with the attorney general a surety bond pursuant to the Charitable Solicitations Act; and

(3) file with the attorney general a copy of the intended written contract between the professional fundraiser and the charitable organization on whose behalf the professional fundraiser intends to conduct a solicitation campaign.

B. The contract between the professional fundraiser and the charitable organization shall clearly describe the:

(1) compensation and authority of the professional fundraiser;

(2) solicitation campaign;

(3) location and telephone numbers from where solicitations are intended to be conducted;

(4) list of names and addresses of all employees, agents or other persons who are to solicit during the campaign; and

(5) copies of the solicitation literature, including scripts of any written or verbal solicitation.

C. The charitable organization on whose behalf the professional fundraiser is acting shall certify that the contract and solicitation materials filed with the attorney general are true and complete.

D. Within ten business days after receiving a registration pursuant to this section, the attorney general shall notify the professional fundraiser of any deficiencies in the registration, contract or bond; otherwise the filing is deemed approved as filed.

E. A professional fundraiser who fails to register with the attorney general may be assessed a late registration fee of five hundred dollars ($500)."

Chapter 124 Section 13

Section 13. A new section of the Charitable Solicitations Act is enacted to read:

"PROFESSIONAL FUNDRAISERS--BOND.--A professional fundraiser shall file a surety bond at the time of the registration with the attorney general in an amount and on a form provided by the attorney general. The professional fundraiser shall maintain the surety bond, or alternative financial assurances approved by the attorney general, as long as the professional fundraiser solicits in the state."

Chapter 124 Section 14

Section 14. A new section of the Charitable Solicitations Act is enacted to read:

"GENERAL PROVISIONS--CHARITABLE ORGANIZATIONS-- PROFESSIONAL FUNDRAISERS--PROHIBITED PRACTICES.--A charitable organization or a professional fundraiser shall not:

A. engage in deceptive fundraising practices, meaning any false or misleading verbal or written statement, description or representation of any kind knowingly made in connection with a solicitation and that may, tends to or does deceive or mislead any person and includes:

(1) using the name or likeness of any person in solicitation literature without the express written consent of the person; provided that publication of previous contributors' names to acknowledge their contributions shall not require their express written consent;

(2) using a name, symbol or statement that is so closely related or similar to that used by another charitable organization or governmental agency that the use would tend to confuse or mislead the public; and

(3) misrepresenting, confusing or misleading any person to reasonably believe incorrectly that the contributions being solicited are or will be used for purposes, persons or programs in the state; or

B. collect or attempt to collect a contribution in person or by courier unless:

(1) the solicitation and collection or attempt to collect occur contemporaneously; or

(2) the solicitation includes the sale of goods or items and the collection or attempt to collect occurs contemporaneously with the delivery of the goods or items agreed to be purchased by the contributor."

Chapter 124 Section 15

Section 15. A new section of the Charitable Solicitations Act is enacted to read:

"PROFESSIONAL FUNDRAISER--RECORDS AND REPORTS.--

A. At least every six months, the professional fundraiser shall account in writing to the charitable organization for all contributions received and all expenses incurred under their contract. The charitable organization shall maintain a copy of the accounting of contributions and expenses for three years and make it available to the attorney general upon request.

B. All contributions of money received by the professional fundraiser shall be deposited in an account at a federally insured financial institution within two days after receipt. The account shall be established and maintained in the name of the charitable organization. Disbursements from the account shall be made upon warrants signed by an authorized representative of the charitable organization and may also be signed by the professional fundraiser.

C. The professional fundraiser shall include the following information in its accounting required by Subsection A of this section to the charitable organization:

(1) the name and address of each person contributing to the charitable organization and the date and amount of the contribution. This information shall not be publicly disclosed and shall be used only for law enforcement purposes;

(2) the name and residence address of each employee, agent or other person involved in the solicitation;

(3) the script or other instructional information provided by the charitable organization or professional fundraiser to employees, agents or other persons conducting solicitations;

(4) a record of expenses incurred by the professional fundraiser that the charitable organization paid; and

(5) the name and address of each financial institution and the account number of each account in which the professional fundraiser deposited contributions received from the solicitation.

D. The professional fundraiser and the employees of the professional fundraiser shall disclose the following in solicitations:

(1) the name of the charitable organization; and

(2) the fact that the solicitation is made by or through a professional fundraiser.

E. Every professional fundraiser and charitable organization shall have either a registered agent in the state or shall file a consent to service of process with the attorney general. The consent to service shall be in the form prescribed by the attorney general and shall be irrevocable."

Chapter 124 Section 16

Section 16. A new section of the Charitable Solicitations Act is enacted to read:

"INVESTIGATIVE DEMAND--CIVIL PENALTY.--

A. Whenever the attorney general has reason to believe that any person may be in possession, custody or control of information or documentary material, including an original or copy of any book, record, report, memorandum, paper, communication, tabulation, chart, photograph, mechanical transcription or other tangible document or recording, that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Charitable Solicitations Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand. The demand shall require the person to answer interrogatories or to produce documentary material and permit the inspection and copying of the material. The demand of the attorney general shall not be a matter of public record and shall not be published by him except by order of the court.

B. Each demand shall:

(1) state the general subject matter of the investigation;

(2) describe with reasonable certainty the information or documentary material to be provided;

(3) identify the time period within which the information or documentary material is to be provided, which in no case shall be less than ten days after the date of service of the demand; and

(4) state the date on which any documentary material shall be available for inspection and copying.

C. No demand shall:

(1) contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state;

(2) require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum by a court of the state; or

(3) require the removal of any documentary material from the custody of the person upon which the demand is served except in accordance with the provisions of Subsection E of this section.

D. Service of the demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or, if the person is not a natural person, to the registered or statutory agent for the person to be served;

(2) delivering a duly executed copy of the demand to the principal place of business in New Mexico of the person to be served; or

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at his principal place of business in the state or, if the person has no place of business in the state, to his principal place of business.

E. Documentary material demanded pursuant to Subsection A of this section shall be produced for inspection and copying during normal business hours at the principal place of business of the person served or may be inspected and copied at such other times and places as may be agreed upon by the person served and the attorney general.

F. Documentary material and its contents produced pursuant to a demand or answers to interrogatories shall not be produced for inspection or copying by anyone other than an authorized employee of the attorney general. The district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under the Charitable Solicitations Act may order documentary material, its contents or answers to interrogatories to be produced for inspection or copying by someone other than an authorized employee of the attorney general.

G. At any time before the return date of the demand, a petition to set aside the demand, modify the demand or extend the return date on the demand may be filed in the district court in the county in which the person resides or has his principal place of business or is about to perform or is performing the practice that is alleged to be unlawful under the Charitable Solicitations Act, and the court upon showing of good cause may set aside the demand, modify it or extend the return date on the demand.

H. If after service of the demand the person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand.

I. This section shall not be applicable to criminal prosecutions.

J. In an action brought pursuant to the Charitable Solicitations Act, if the court finds that a person has violated a provision of that act or rules promulgated pursuant to that act,

the attorney general may recover, on behalf of the state, a maximum civil penalty of five thousand dollars ($5,000) per violation."

Chapter 124 Section 17

Section 17. A new section of the Charitable Solicitations Act is enacted to read:

"EXCHANGE OF INFORMATION WITH OTHER STATES.--The attorney general may exchange information obtained by the civil investigative demand with comparable authorities of other states or the federal government regarding charitable organizations, professional fundraisers and professional fundraising counsel. Information acquired by exchange with other states or the federal government shall be exempt from inspection pursuant to the Inspection of Public Records Act. Information shall not be exchanged with comparable authorities of other states or the federal government unless the information is similarly exempt from inspection pursuant to applicable laws of such other states or the federal government."

Chapter 124 Section 18

Section 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 325, AS AMENDED

CHAPTER 125

RELATING TO MUNICIPALITIES; AMENDING SECTIONS OF THE MANUFACTURED HOUSING AND ZONING ACT TO LIMIT CERTAIN REGULATIONS OF MANUFACTURED HOMES BY POLITICAL SUBDIVISIONS.

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

Chapter 125 Section 1

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

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

A. "multi-section manufactured housing" means a manufactured home or modular home that is a single-family dwelling with a heated area of at least thirty-six by twenty-four feet and at least eight hundred sixty-four square feet and constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as

amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the regulations made pursuant thereto relating to permanent foundations; and

B. "mobile home" means a movable or portable housing structure larger than forty feet in body length, eight feet in width or eleven feet in overall height, designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code."

Chapter 125 Section 2

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

"3-21A-3. MANUFACTURED HOUSING--PERMISSIBLE REGULATIONS.--In the exercise of any of the powers and duties conferred by law, no governing body of a political subdivision of the state or any planning and zoning agency thereunder shall exclude multi-section manufactured homes from a specific-use district in which site-built, single-family housing is allowed or place more severe restrictions upon a multi-section manufactured home than are placed upon single-family, site-built housing within that specific-use district so long as the manufactured housing is built or constructed according to the Housing and Urban Development Zone Code II or the Uniform Building Code. The governing body of any political subdivision of the state or any planning and zoning agency thereunder is authorized to regulate manufactured housing to require that it meets all requirements other than original construction requirements of other single-family dwellings that are site-built homes in the same specific-use district and to further require by ordinance that such manufactured housing be consistent with applicable historic or aesthetic standards."

Chapter 125 Section 3

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

"3-21A-5. IMPERMISSIBLE REGULATIONS.--No ordinance or regulation authorized by the Manufactured Housing and Zoning Act shall regulate the original construction of the manufactured home or mobile home."

Chapter 125 Section 4

Section 4. Section 3-21A-6 NMSA 1978 (being Laws 1987, Chapter 196, Section 6) is amended to read:

"3-21A-6. PRIVATE COVENANTS AND DEED RESTRICTIONS--LOCAL GOVERNMENT RESTRICTIONS.--

A. Nothing in the Manufactured Housing and Zoning Act or any ordinance or regulation adopted pursuant thereto shall be construed as abrogating or limiting a recorded restrictive covenant or deed restriction.

B. The provisions of the Manufactured Housing and Zoning Act shall not be construed as abrogating or limiting the powers of political subdivisions regarding the exercise of zoning, planning and subdivision powers except to the extent the exercise of such powers is inconsistent with the provisions of the Manufactured Housing and Zoning Act and the Manufactured Housing Act."

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 330, AS AMENDED

CHAPTER 126

RELATING TO PUBLIC HEALTH; ENACTING THE PAIN RELIEF ACT; PROVIDING DISCIPLINARY ACTIONS AND PROHIBITIONS; REQUIRING NOTIFICATION TO HEALTH CARE PROVIDERS; DEFINING THE SCOPE OF THE ACT.

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

Chapter 126 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Pain Relief Act".

Chapter 126 Section 2

Section 2. DEFINITIONS.--As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice guideline for pain management developed by the American pain society, the American geriatric society, the agency for health care policy, the national cancer pain initiatives or any other nationally recognized clinical or professional association, a speciality society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion whose guidelines have been accepted by the New Mexico board of medical examiners;

B. "board" means the licensing board of a health care provider;

C. "clinical expert" means a person who by reason of specialized education or substantial relevant experience in pain management has knowledge regarding current standards, practices and guidelines;

D. "disciplinary action" means any formal action taken by a board against a health care provider, upon a finding of probable cause that the health care provider has engaged in conduct that violates the Medical Practice Act;

E. "health care provider" means a person licensed or otherwise authorized by law to provide health care in the ordinary course of business or practice of his profession and to have prescriptive authority within the limits of their license;

F. "intractable pain" means a state of pain, even if recurring, in which reasonable efforts to remove or remedy the cause of the pain have failed or have proven inadequate; and

G. "therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical medical treatment that conforms substantially to accepted guidelines for pain management.

Chapter 126 Section 3

Section 3. DISCIPLINARY ACTION--EVIDENTIARY REQUIREMENTS.--

A. No health care provider who prescribes, dispenses or administers medical treatment for the purpose of relieving intractable pain and who can demonstrate by reference to an accepted guideline that his practice substantially complies with that guideline and with the standards of practice identified in Section 4 of the Pain Relief Act shall be subject to disciplinary action or criminal prosecution, unless the showing of substantial compliance with an accepted guideline is rebutted by clinical expert testimony. If no currently accepted guidelines are available, then rules issued by the board may serve the function of such guidelines for purposes of the Pain Relief Act. The board rules must conform to the intent of that act. Guidelines established primarily for purposes of coverage, payment or reimbursement do not qualify as an "accepted guideline" when offered to limit treatment options otherwise covered within the Pain Relief Act.

B. In the event that a disciplinary action or criminal prosecution is pursued, the board or prosecutor shall produce clinical expert testimony supporting the finding or charge of violation of disciplinary standards or other legal requirements on the part of the health care provider. A showing of substantial compliance with an accepted guideline can only be rebutted by clinical expert testimony.

C. The provisions of this section shall apply to health care providers in the treatment of all patients for intractable pain, regardless of the patients' prior or current chemical dependency or addiction. The board may develop and issue rules establishing standards and procedures for the application of the Pain Relief Act to the care and treatment of chemically dependent individuals.

Chapter 126 Section 4

Section 4. DISCIPLINARY ACTION--PROHIBITIONS.--Nothing in the Pain Relief Act shall prohibit discipline or prosecution of a health care provider for:

A. failing to maintain complete, accurate and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient and the treatment plan for the patient;

B. writing false or fictitious prescriptions for controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or Sections 26-1-23 and 30-31-18 NMSA 1978;

C. prescribing, administering or dispensing pharmaceuticals in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 or Sections 26-1-23 and 30-31-18 NMSA 1978; or

D. diverting medications prescribed for a patient to the provider's personal use or to other persons.

Chapter 126 Section 5

Section 5. NOTIFICATION.--The board shall make reasonable efforts to notify health care providers under its jurisdiction of the existence of the Pain Relief Act and inform any health care provider investigated in relation to the provider's practices in the management of pain of the existence of that act.

Chapter 126 Section 6

Section 6. SCOPE OF ACT.--Nothing in the Pain Relief Act shall be construed as expanding the authorized scope of practice of health care providers.

SENATE BILL 343, AS AMENDED

CHAPTER 127

RELATING TO LICENSING; CREATING AND DEFINING CERTAIN RELATIONSHIPS BETWEEN PERSONS PURSUANT TO THE REAL ESTATE LICENSING LAW; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 127 Section 1

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1959, Chapter 226, Section 2, as amended) is repealed and a new Section 61-29-2 NMSA 1978 is enacted to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS.--

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" or "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;

(2) "broker" or "qualifying broker" means a person who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) leases, rents or auctions or offers to lease, rent or auction real estate;

(c) advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(d) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which he 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;

(3) "brokerage" means a licensed qualifying broker, the licensed real estate business represented by the broker and its affiliated licensees;

(4) "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;

(5) "commission" means the New Mexico real estate commission created pursuant to Section 61-29-4 NMSA 1978;

(6) "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;

(7) "license" means a real estate broker's license issued by the commission;

(8) "licensee" means anyone holding a valid real estate license subject to the jurisdiction of the commission;

(9) "nonagent" means a brokerage and its licensees providing real estate services to either clients by means of an express written agreement or to customers without an express written agreement;

(10) "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; and

(11) "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 Subparagraphs (a) through (d) of Paragraph (2) of this subsection or to carry on the broker's business as a whole or partial vocation.

B. A single act of a person in performing or attempting to perform an activity described in Subparagraphs (a) through (d) of Paragraph (2) of Subsection A of this section makes the person a broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (11) of Subsection A of this section makes the person a real estate salesperson.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner or lessor performs any of the activities included in this section with reference to property owned or leased by him, the employees of the owner or lessor or the employees of a broker acting on behalf of the owner or lessor, with respect to the property owned or leased, if the acts are performed in the regular course of or incident to the management of the property and the investments, except where when the sale or offering for sale or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(3) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(4) the services rendered by an attorney at law in the performance of his duties as an attorney at law;

(5) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(6) the activities of a salaried employee of a governmental agency acting within the scope of his employment; or

(7) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction."

Chapter 127 Section 2

Section 2. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"BROKERAGE RELATIONSHIPS--CREATION.--

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. The commission shall promulgate rules governing the rights and responsibilities of clients or customers and the rights, responsibilities and duties of the brokerage in an agency relationship."

Chapter 127 Section 3

Section 3. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"BROKERAGE RELATIONSHIP--DISCLOSURE.--A licensee shall give to a prospective buyer, seller, landlord or tenant at the first substantive contact a brokerage relationship disclosure in accordance with requirements established by the commission."

Chapter 127 Section 4

Section 4. A new section of Chapter 61, Article 29 NMSA 1978 is enacted to read:

"BROKERAGE NONAGENCY RELATIONSHIPS--CREATION.--

A. For all regulated real estate transactions first executed on or before January 1, 2000, a buyer, seller, landlord or tenant using real estate services without entering into an express written agreement will be a customer of the brokerage providing the real estate services, and no agency relationship or agency duties will be imposed.

B. For all regulated real estate transactions first executed on or after January 1, 2000, a buyer, seller, landlord or tenant may enter into an express written agreement to become a client of a brokerage, without creating an agency relationship, and no agency duties will be imposed.

C. The commission shall promulgate rules governing the rights and responsibilities of clients and customers and the rights, responsibilities and duties of the brokerage in a nonagency relationship. All licensees will perform the duties of licensees as prescribed by the commission."

SENATE BILL 493, AS AMENDED

CHAPTER 128

AN ACT

RELATING TO LICENSING; MAKING CHANGES IN THE SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AND DISPENSING PRACTICES ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 128 Section 1

Section 1. Section 61-14B-1 NMSA 1978 (being Laws 1996, Chapter 57, Section 1) is amended to read:

"61-14B-1. SHORT TITLE.--Chapter 61, Article 14B NMSA 1978 may be cited as the "Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act"."

Chapter 128 Section 2

Section 2. Section 61-14B-2 NMSA 1978 (being Laws 1996, Chapter 57, Section 2) is amended to read:

"61-14B-2. DEFINITIONS.--As used in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act:

A. "apprentice" means a person working toward full licensure in speech-language pathology who meets the requirements for licensure as an apprentice in speech and language pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. "auditory trainer" means a custom-fitted FM amplifying instrument other than a hearing aid designed to enhance signal-to-noise ratios;

C. "audiologist" means a person who engages in the practice of audiology, who may or may not dispense hearing aids and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

D. "board" means the speech language pathology, audiology and hearing aid dispensing practices board;

E. "business location" means a permanent physical business location in New Mexico where records can be examined and process served;

F. "clinical fellow" means a person who has completed all academic course work and practicum requirements for a master's degree or the equivalent in speech-language pathology or audiology or both and engages in the practice of speech-language pathology or audiology as set forth in the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

G. "clinical fellowship year" or "CFY" means the time following the completion of all academic course work and practicum requirements for a master's degree in speech-language pathology or audiology or both and during which a clinical fellow is working towards a certificate of clinical competence from a nationally recognized speech-language or hearing association or the equivalent;

H. "CFY supervisor" means a person licensed pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act who oversees the work of a clinical fellow and is so designated in the CFY plan that is approved by the board;

I. "department" means the regulation and licensing department;

J. "hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, including earmolds but excluding batteries and cords;

K. "hearing aid dispenser" means any person other than a audiologist or an otolaryngologist who is licensed to sell, fit and service hearing aids under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and maintains or occupies a permanent physical business location in New Mexico where records can be examined and process can be served;

L. "otolaryngologist" means a licensed physician who has completed a recognized residency in otolaryngology and is certified by the American board of otolaryngology;

M. "paraprofessional" means a person who provides adjunct speech-pathology or audiology services under the direct supervision of a licensed speech-language pathologist or audiologist;

N. "practice of audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prognostication, aural rehabilitation, aural habilitation, consultation, hearing aid selection and fitting, counseling, instruction and research related to hearing and disorders of hearing for the purpose of nonmedical diagnosis, prevention, identification, amelioration or the modification of communicative disorders involving speech, language auditory function or other aberrant behavior related to hearing disorders;

O. "practice of hearing aid dispensing" means the behavioral measurement of human hearing for the purpose of the selection and fitting of hearing aids or other rehabilitative devices to ameliorate the dysfunction of hearing sensitivity; this may include otoscopic inspection of the ear, fabrication of ear impressions and earmolds, instruction, consultation and counseling on the use and care of these instruments, medical referral when appropriate and the analysis of function and servicing of these instruments involving their modification or adjustment;

P. "practice of speech-language pathology" means the rendering or offering to render to individuals, groups, organizations or the public any service in speech or language pathology involving the nonmedical application of principles, methods and procedures for the measurement, testing, diagnosis, prognostication, counseling and instruction related to the development and disorders of communications, speech, fluency, voice, verbal and written language, auditory comprehension, cognition, dysphagia, oral pharyngeal or laryngeal sensorimotor competencies and treatment of persons requiring use of an augmentative communication device for the purpose of nonmedical diagnosing, preventing, treating and ameliorating such disorders and conditions in individuals and groups of individuals;

Q. "screening" means a pass-fail procedure to identify individuals who may require further assessment in the areas of speech-language pathology, audiology or hearing aid dispensing;

R. "speech-language pathologist" means a person who engages in the practice of speech-language pathology and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

S. "sponsor" means a licensed hearing aid dispenser, audiologist or otolaryngologist who has an endorsement to dispense hearing aids and:

(1) is employed in the same business location where the trainee is being trained; and

(2) has been actively engaged in the dispensing of hearing aids during three of the past five years;

T. "student" means any person who is a full- or part-time student enrolled in an accredited college or university program in speech-language pathology, audiology or communicative disorders;

U. "supervisor" means a speech-language pathologist or audiologist licensed pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act who provides supervision in the area of speech-language pathology or audiology; and

V. "trainee" means a person working toward full licensure as a hearing aid dispenser under the direct supervision of a sponsor."

Chapter 128 Section 3

Section 3. A new section of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is enacted to read:

"SCOPE OF PRACTICE--APPRENTICE IN SPEECH AND LANGUAGE.--

The scope of practice for an apprentice in speech and language is to provide adjunct services that are planned, selected or designed by the supervising speech-language pathologist. These services may include:

A. conducting speech language or hearing screenings;

B. following documented treatment plans or protocols;

C. preparing written daily plans based on the overall intervention plan;

D. recording, charting, graphing or otherwise displaying data relative to client performance and reporting performance changes to the supervisor;

E. maintaining daily service notes or delivery notes and completing daily charges as requested;

F. reporting but not interpreting data relative to client performance to teacher, family or other professionals;

G. performing clerical duties, including maintenance of therapy and diagnostic materials, equipment and client files as directed by the supervisor;

H. assisting the speech-language pathologist during client treatment and assessment; and

I. assisting the speech-language pathologist in research, in-service, training and public relations programs."

Chapter 128 Section 4

Section 4. Section 61-14B-5 NMSA 1978 (being Laws 1996, Chapter 57, Section 5) is amended to read:

"61-14B-5. SCOPE OF PRACTICE--AUDIOLOGISTS.--

A. The scope of practice for audiologists shall include:

(1) the rendering or offering to render professional services, including non-medical diagnosis, prevention, identification, evaluation, consultation, counseling, habilitation, rehabilitation and instruction on and prognostication of individuals having or suspected of having disorders of hearing, balance or central auditory processing;

(2) identification and evaluation of auditory function through the performance and interpretation of appropriate behavioral or electrophysiological tests for this purpose;

(3) making ear impressions for use with auditory trainers or for non-amplified devices such as swim molds or ear protectors;

(4) cerumen management; and

(5) evaluation and management of tinnitus.

B. The scope of practice for audiologists may include:

(1) consultation regarding noise control or environmental noise evaluation;

(2) hearing conservation;

(3) calibration of equipment used in hearing testing and environmental evaluation;

(4) fitting and management of auditory trainers, including their general service, adjustment and analysis of function, as well as instruction, orientation and counseling in the use and care of these instruments;

(5) speech or language screening for the purposes of audiological evaluation or initial identification for referral of individuals with disorders of communication other than hearing; and

(6) supervision of students, clinical fellows and paraprofessionals.

C. The scope of practice for audiologists may be expanded by special endorsement to include the dispensing of hearing aids. This expanded scope:

(1) shall include the scope of practice for audiologists as specified in Subsections A and B of this section;

(2) shall include the scope of practice for hearing aid dispenser; and

(3) may include the sponsorship of hearing aid dispenser trainees."

Chapter 128 Section 5

Section 5. Section 61-14B-12 NMSA 1978 (being Laws 1996, Chapter 57, Section 12) is amended to read:

"61-14B-12. REQUIREMENTS FOR LICENSURE--SPEECH-LANGUAGE PATHOLOGIST--AUDIOLOGIST.--A license to practice as a speech-language pathologist or an audiologist shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the applicant:

A. holds at least a master's degree in speech pathology, speech-language pathology, communication disorders or audiology or equivalent degree regardless of degree name and meets the academic requirements for certification by a nationally recognized speech language or hearing association;

B. certifies that he is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and

C. currently holds a certificate of clinical competence from a nationally recognized speech-language or hearing association in the area for which he is seeking licensure; or

D. has submitted evidence of having completed the current academic, practicum and employment experience requirements for a certificate of clinical competence from a nationally recognized speech-language or hearing association in the area for which he is applying for license and has passed a recognized standard national examination in either speech-language pathology or audiology or both and has complied with the provisions of Subsection B of this section."

Chapter 128 Section 6

Section 6. Section 61-14B-13 NMSA 1978 (being Laws 1996, Chapter 57, Section 13) is amended to read:

"61-14B-13. REQUIREMENTS FOR ENDORSEMENT TO DISPENSE HEARING AIDS AS AN AUDIOLOGIST OR OTOLARYNGOLOGIST.--An endorsement to practice hearing aid dispensing shall be issued to a licensed audiologist or otolaryngologist who files a completed application accompanied by the required fees and documentation and who:

A. provides evidence satisfactory to the board of at least six months' experience in the dispensing of hearing aids through practical examination or other methods as

determined by the board in either a graduate training program or in a work or training experience;

B. maintains or occupies a business location, hospital, clinical medical practice or other facility where hearing aids are regularly dispensed;

C. passes the jurisprudence examination given by the board; and

D. certifies that he is not guilty of any activities listed in Section 61-14B-21 NMSA 1978."

Chapter 128 Section 7

Section 7. Section 61-14B-14 NMSA 1978 (being Laws 1996, Chapter 57, Section 14) is amended to read:

"61-14B-14. REQUIREMENTS FOR LICENSURE BY EXAMINATION--HEARING AID DISPENSER.--

A. A license to practice as a hearing aid dispenser shall be issued to any person who files a completed application, passes the examination approved by the board, pays the required fees, provides required documentation and submits satisfactory evidence that the person:

(1) is an audiologist, a clinical fellow in audiology or an otolaryngologist; or

(2) is a person other than an audiologist, a clinical fellow in audiology or an otolaryngologist applying for a license under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and who:

(a) has reached the age of majority and has at least a high school education or the equivalent;

(b) has worked for no less than seven months under a training permit; and

(c) certifies that he is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978.

B. The examination for hearing aid dispenser shall be conducted by the board quarterly unless there are no applicants for examination.

C. The board:

(1) shall provide procedures to assure that examinations for licensure are offered as needed;

(2) shall establish rules regarding the examination application deadline and other rules relating to the taking and retaking of licensure examinations;

(3) shall determine a passing grade for the examination; and

(4) may accept an applicant's examination scores used for national certification or other examination approved by the board."

Chapter 128 Section 8

Section 8. A new section of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is enacted to read:

"REQUIREMENTS FOR LICENSURE--APPRENTICE IN SPEECH AND LANGUAGE.--A license to practice as an apprentice in speech and language shall be issued by the board to any person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant:

A. is working toward full licensure pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. has a baccalaureate degree in speech-language pathology or communicative disorders or an equivalent degree regardless of degree name or a baccalaureate degree in another field with thirty semester hours of credit in speech-language pathology, audiology or communicative disorder;

C. is enrolled in and successfully completes graduate classes in communicative disorders at a minimum rate of nine semester hours per year and is accepted into a master's level program in communicative disorders within two years of initial licensing;

D. maintains a minimum of a 3.0 grade point average in his master's degree course and other work;

E. is supervised by an individual licensed as a speech-language pathologist who has a minimum of two years experience as a speech-language pathologist; and

F. receives a minimum of ten percent direct supervision and ten percent indirect supervision."

Chapter 128 Section 9

Section 9. Section 61-14B-17 NMSA 1978 (being Laws 1996, Chapter 57, Section 17) is amended to read:

"61-14B-17. HEARING AID DISPENSING TEMPORARY TRAINEE PERMITS--ISSUANCE.--

A. Any person who does not meet the requirements for licensure without examination as an audiologist or otolaryngologist as set forth in Section 61-14B-13 NMSA 1978 or as a hearing aid dispenser as set forth in Section 61-14B-14 NMSA 1978, may apply for a temporary trainee permit. A temporary trainee permit shall be issued to a person who:

(1) has reached the age of majority and has a high school education or the equivalent;

(2) has identified a sponsor;

(3) pays an application fee as determined by the board;

(4) has not failed the licensing examination twice within a five-year period; and

(5) certifies that he is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978.

B. A temporary trainee permit shall:

(1) be valid for one year from the date of its issuance and is nonrenewable for a period of one year following its expiration; and

(2) allow the person to complete a training period.

C. A person issued a temporary trainee permit may be eligible for licensure as a hearing aid dispenser upon:

(1) the completion of a minimum of three hundred twenty hours of training, to be completed within a three-month period under the direct supervision of the sponsor;

(2) the completion of five continuous months of full-time dispensing work, during which time all sales are approved by the sponsor prior to delivery; and

(3) the sponsor approving all fittings, adjustments, modifications or repairs to hearing aids and earmolds.

D. An audiologist, clinical fellow in audiology or otolaryngologist issued a temporary trainee permit may be eligible for licensure without examination as a hearing aid dispenser upon the sponsor providing direct supervision for a minimum of three months of all fittings, adjustments, modifications or repairs to hearing aids and earmolds."

Chapter 128 Section 10

Section 10. Section 61-14B-20 NMSA 1978 (being Laws 1996, Chapter 57, Section 20) is amended to read:

"61-14B-20. FEES.--The board shall establish a schedule of reasonable fees for applications, licenses, renewal of licenses, exams, penalties and administrative fees. The license and license renewal fees shall not exceed:

A. fifty dollars ($50.00) for clinical fellows and apprentices in speech and language;

B. one hundred dollars ($100) for audiologists or speech-language pathologists;

C. three hundred dollars ($300) for hearing aid dispensers;

D. two hundred dollars ($200) for examinations;

E. one hundred dollars ($100) for late renewal fees;

F. two hundred dollars ($200) for hearing aid dispensing endorsement;

G. five hundred dollars ($500) for a hearing aid trainee license, which fee includes examination, both written and practical; and

H. reasonable administrative fees."

Chapter 128 Section 11

Section 11. REPEAL.--Section 61-14B-4 NMSA 1978 (being Laws 1996, Chapter 57, Section 4) is repealed.

SENATE BILL 524, AS AMENDED

CHAPTER 129

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR THE USE OF VEHICLES WITH SPECIAL DEALER PLATES BY CERTAIN COACHES AND ATHLETIC DIRECTORS; DECLARING AN EMERGENCY.

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

Chapter 129 Section 1

Section 1. Section 66-3-401.1 NMSA 1978 (being Laws 1998, Chapter 48, Section 9) is amended to read:

"66-3-401.1. USE OF VEHICLES WITH SPECIAL DEALER PLATES BY COACHES AND ATHLETIC DIRECTORS.--

A. Pursuant to Section 66-3-401 NMSA 1978, a dealer may register a vehicle in the name of the dealer for the purpose of providing the use of a vehicle from the inventory of the dealer to a full-time coach or athletic director at any state-supported four-year institution of higher education in New Mexico.

B. A vehicle that a dealer elects to register pursuant to Subsection A of this section is not required to be titled pursuant to the provisions of the Motor Vehicle Code, but the vehicle must be included in the driver's inventory for Internal Revenue Code of 1986 purposes and transferred to the full-time coach or athletic director under conditions that require the dealer to report the value of the use of the vehicle as income to the full-time coach or athletic director.

C. The number of vehicles registered and used pursuant to the provisions of this section shall be excluded when determining compliance with the maximum number of special dealer plates allowed pursuant to Subsection B of Section 66-3-402 NMSA 1978."

Chapter 129 Section 2

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

SENATE BILL 528, AS AMENDED

SIGNED April 5, 1999

CHAPTER 130

AN ACT

RELATING TO LICENSING; CHANGING THE DEFINITION OF "CONTRACTOR" IN THE CONSTRUCTION INDUSTRIES LICENSING ACT.

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

Chapter 130 Section 1

Section 1. Section 60-13-3 NMSA 1978 (being Laws 1978, Chapter 66, Section 1, as amended by Laws 1997, Chapter 181, Section 2 and also by Laws 1997, Chapter 235, Section 1) is amended to read:

"60-13-3. DEFINITION--CONTRACTOR.--As used in the Construction Industries Licensing Act, "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes constructing, altering, repairing, installing or demolishing any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, bridle path, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility,

power generating plant, pump station, natural gas compressing station or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or mining appurtenance;

(12) leveling or clearing land;

(13) excavating earth;

(14) air conditioning, conduit, heating or other similar mechanical works;

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes his skill and

knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative that constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

(6) a telephone or telegraph company or rural electric cooperative that installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that work is an integral part of the operation of a communication system owned and operated by a telephone or telegraph company or rural electric cooperative in rendering authorized service;

(7) a pipeline company that installs, alters or repairs electrical equipment and devices for the operation of signals or the transmission of intelligence where that service is an integral part of the operation of the communication system of that pipeline company and is not for hire or for the use of the general public, or any pipeline company which installs, alters or repairs plumbing fixtures or gas piping where the work is an integral part of installing and operating the system owned or operated by the pipeline company in rendering its authorized service;

(8) any mining company, gas company or oil company that installs, alters or repairs its facilities, including plumbing fixtures or gas piping, where the work is an integral part of

the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

(9) a radio or television broadcaster who installs, alters or repairs electrical equipment used for radio or television broadcasting;

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property; provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act; and provided further that he does not engage in commercial construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring that are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time that, in the aggregate or singly, does not exceed seven thousand two hundred dollars ($7,200) compensation a year, the work being casual, minor or inconsequential, such as handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in Section 60-13-32 NMSA 1978 and provided:

(a) the work is not part of a larger or major operation undertaken by the same individual or different contractor;

(b) the individual does not advertise or maintain a sign, card or other device which would indicate to the public that he is qualified to engage in the business of contracting; and

(c) the individual files annually with the division, on a form prescribed by the division, a declaration substantially to the effect that he is not a contractor within the meaning of the Construction Industries Licensing Act, that the work he performs is casual, minor or inconsequential and will not include more than one undertaking or project at one time and that the total amount of such contracts, in the aggregate or singly, will not exceed seven thousand two hundred dollars ($7,200) compensation a year;

(15) any person, firm or corporation that installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel;

(16) a cable television or community antenna television company that constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals;

(17) any weatherization project not exceeding two thousand dollars ($2,000) that has been approved and is administered by a federal or state agency; or

(18) a person who performs work consisting of short-term depreciable improvements to commercial property to provide needed repairs and maintenance for items not covered by building codes adopted by the construction industry commission if the total amount paid the person for the work on a single undertaking, including materials, services and wages of those who work for him, does not exceed the sum of five thousand dollars ($5,000)."

SENATE BILL 554, AS AMENDED

CHAPTER 131

AN ACT

RELATING TO TITLE INSURANCE; PROVIDING AUTHORITY TO THE SUPERINTENDENT OF INSURANCE TO DETERMINE TITLE INSURER ASSESSMENTS; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 131 Section 1

Section 1. Section 59A-16C-14 NMSA 1978 (being Laws 1998, Chapter 115, Section 14) is amended to read:

"59A-16C-14. INSURANCE FRAUD FUND CREATED-- APPROPRIATION.--

A. There is created an "insurance fraud fund" in the state treasury. All fees collected under the provisions of the Insurance Fraud Act shall be deposited in the fund and are subject to appropriation for use in paying the expenses incurred by the superintendent in carrying out the provisions of the Insurance Fraud Act. Interest on the fund shall be credited to the fund. The fund is a continuing, nonreverting fund.

B. To implement the provisions of the Insurance Fraud Act, the superintendent shall determine a rate of assessment and collect a fee from authorized insurers in an amount not less than two hundred dollars ($200) and not exceeding one-tenth of one percent of the correctly reported direct written premiums on policies written in New Mexico by the authorized insurers. The superintendent, after taking into account unexpended money produced by collection of the fee, shall adjust the rate of assessment each year to produce the amount of money that he estimates will be necessary to pay expenses incurred by the superintendent in carrying out the provisions of the Insurance Fraud Act. The assessment for a title insurer, as defined in Section 59A-30-3 NMSA 1978, shall be determined by the superintendent at the annual hearing conducted pursuant to Section 59A-30-8 NMSA 1978.

C. In calculating the direct written premiums for an insurer pursuant to the provisions of this section, all direct written premiums for workers' compensation insurance shall be excluded from the calculation.

D. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed."

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 572

CHAPTER 132

RELATING TO LIMITED LIABILITY COMPANIES; MAKING CLEAR THAT SINGLE MEMBER LIMITED LIABILITY COMPANIES ARE AUTHORIZED BY LAW.

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

Chapter 132 Section 1

Section 1. Section 53-19-7 NMSA 1978 (being Laws 1993, Chapter 280, Section 7) is amended to read:

"53-19-7. FORMATION.--One or more persons may form a limited liability company by filing articles of organization with the commission. The person or persons forming the limited liability company need not be members of the limited liability company. One or

more persons may own and operate the limited liability company. A single member limited liability company formed prior to July 1, 1999 is a lawful entity."

Chapter 132 Section 2

Section 2. Section 53-19-8 NMSA 1978 (being Laws 1993, Chapter 280, Section 8) is amended to read:

"53-19-8. ARTICLES OF ORGANIZATION.--The articles of organization shall set forth:

A. a name for the limited liability company that satisfies the requirements of Section 53-19-3 NMSA 1978;

B. the street address of the registered office and the name of the registered agent and the street address of the limited liability company's current principal place of business, if different from the address of its registered office;

C. the latest date upon which the limited liability company is to dissolve;

D. if management of the limited liability company is vested to any extent in a manager, a statement to that effect and of the extent to which management is so vested;

E. if the limited liability company is a single member limited liability company; and

F. any other provision that the persons signing the articles choose to include in the articles, including provisions for the regulation of the internal affairs of the limited liability company."

Chapter 132 Section 3

Section 3. Section 53-19-9 NMSA 1978 (being Laws 1993, Chapter 280, Section 9) is amended to read:

"53-19-9. FILING.--

A. The organizer or organizers of a limited liability company shall file with the commission:

(1) the signed original of the articles of organization, together with a duplicate copy, which may be either signed, photocopied or conformed;

(2) the affidavit of the person appointed registered agent, accepting appointment as registered agent; and

(3) any other documents required to be filed pursuant to the Limited Liability Company Act.

B. The commission may accept a facsimile transmission for filing.

C. If the commission determines that the documents delivered for filing conform with the provisions of the Limited Liability Company Act, it shall, when all required filing fees have been paid:

(1) endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) retain a signed original in the files of the commission; and

(3) return each duplicate copy to the person who delivered it to the commission or to that person's representative."

Chapter 132 Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 583, AS AMENDED

CHAPTER 133

RELATING TO HEALTH INSURANCE; AMENDING SECTIONS OF THE NONPROFIT HEALTH CARE PLAN LAW RELATING TO QUALIFICATIONS FOR ORGANIZATION IN THE STATE.

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

Chapter 133 Section 1

Section 1. Section 59A-37-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 621, as amended) is amended to read:

"59A-37-6. APPROVAL BY SUPERINTENDENT--REVIEW.--

A. The superintendent shall approve any merger or other acquisition of control referred to in Section 59A-37-4 NMSA 1978 unless, after a public hearing thereon, he finds that:

(1) after the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;

(2) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(4) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any other person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(5) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control;

(6) the applicable provisions of Chapter 59A, Article 34 NMSA 1978 would be violated; or

(7) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

B. The superintendent may retain at the acquiring party's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the superintendent's staff reasonably necessary to assist the superintendent to review the proposed acquisition of control.

C. The superintendent shall ensure, by imposition of conditions, if necessary, that New Mexico charitable assets are protected and preserved for the benefit of the people of New Mexico."

Chapter 133 Section 2

Section 2. Section 59A-47-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.2) is amended to read:

"59A-47-4. ORGANIZATION--PROFIT CORPORATIONS PROHIBITED--MERGER AND CONSOLIDATION OF HEALTH CARE PLANS.--

A. A corporation may be organized under the laws of this state which provide for the organization of nonprofit corporations, as a nonprofit corporation organized for making health care expense payments on a service benefit basis or an indemnity basis, or both, for subscribers under contract with such corporation.

B. The articles of incorporation of each domestic health care plan shall have endorsed thereon or annexed thereto the consent of the superintendent prior to filing. The amendment of the articles of incorporation of any domestic health care plan shall have endorsed thereon or annexed thereto the consent of the superintendent prior to filing.

C. The directors of a domestic health care plan shall be chosen in accordance with the bylaws of the corporation, subject to the following:

(1) at least twenty-five percent of the directors shall be members of the general public; and

(2) the balance of the directors shall be either representatives of purveyors or members of the general public.

D. No domestic health care plan shall be converted into a corporation organized for pecuniary profit; and any such plan shall be maintained and operated primarily for the benefit of its subscribers.

E. A domestic health care plan may merge only with another domestic health care plan in accordance with applicable provisions of the Insurance Holding Company Law and the Nonprofit Corporation Act."

Chapter 133 Section 3

Section 3. Section 59A-47-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.3, as amended) is amended to read:

"59A-47-5. QUALIFICATIONS FOR HEALTH CARE PLAN AUTHORITY.--The superintendent shall not authorize any proposed health care plan to solicit preliminary applications from subscribers or to transact business as a health care plan unless he finds after such investigation and hearings as he deems advisable that the proposed health care plan is qualified therefor as follows:

A. it shall be duly incorporated as a health care plan under the laws of a state governing incorporation of nonprofit corporations;

B. its sponsors shall have financial stability and its directors and officers shall be individuals of good personal and business reputation and integrity;

C. its proposed management shall possess experience and competence as to the business in which to engage;

D. it shall have ready access to health care facilities in this state reasonably sufficient to provide the health care services to be covered by its subscriber contracts, whether on service or indemnity bases;

E. it shall actually or prospectively have sufficient funds to finance preliminary solicitation of subscribers and to conduct its operations with reasonable margin of financial safety;

F. its proposed contracts to be offered subscribers shall be well drafted and provide substantial health care coverage and benefits at reasonable premium rates;

G. operation of the health care plan in the area of this state proposed to be served would be in the public interest and of convenience to its residents; and

H. if it a newly formed health care plan, prior to being granted an initial certificate of authority to engage in business, it shall have applied for and received from the superintendent a preliminary permit to solicit subscribers' applications for health care contracts as proposed to be offered, and thereunder have solicited and received, within one year from date of the preliminary permit, applications for coverage of not less than one thousand individuals under such contracts together with payment in advance of one month's premium therefor or if it is a foreign health care plan with a certificate of authority from its state of domicile, it must already cover not less than one thousand individuals."

Chapter 133 Section 4

Section 4. Section 59A-47-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.6) is amended to read:

"59A-47-8. CERTIFICATE OF AUTHORITY REQUIRED--APPLICATION AND CONDITIONS--EXCEPTIONS.--

A. No health care plan shall make health care expense payments unless and until it has obtained from the superintendent a certificate of authority to do business. Violation of this provision shall constitute a misdemeanor punishable upon conviction by a fine of not to exceed one thousand dollars ($1,000).

B. A newly formed health care plan's application for initial certificate of authority must be filed with the superintendent prior to expiration of one year from date of issuance of the preliminary permit referred to in Section 59A-47-6 NMSA 1978.

C. The application for certificate of authority shall be in the form prescribed and furnished by the superintendent consistent with Chapter 59A, Article 47 NMSA 1978, and be verified by two of the applicant's officers. The application shall include or be accompanied by such proof as the superintendent may reasonably require that the applicant is qualified for the certificate of authority under this article. At filing of the application the applicant shall pay to the superintendent the applicable filing fee as specified in Section 59A-6-1 NMSA 1978. The filing fee shall not be refundable.

D. No such certificate of authority shall be required for a health care plan formerly so authorized, to enable it to investigate and settle losses under its contracts lawfully written in New Mexico, or to liquidate assets and liabilities (other than collection of new premiums) resulting from its former authorized operations in this state. A health care plan not transacting new business in this state but continuing collection of premiums on

and servicing contracts remaining in force as to residents of or risks located in this state, is transacting business in New Mexico for the purpose of premium tax requirements only and is not required to have a certificate of authority."

Chapter 133 Section 5

Section 5. Section 59A-47-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.7) is amended to read:

"59A-47-9. ISSUANCE AND DENIAL OF INITIAL CERTIFICATE OF AUTHORITY.--

A. If after such investigation as he deems advisable the superintendent finds that the applicant is in sound financial condition and is otherwise qualified therefor, he shall issue to the applicant a certificate of authority as a health care plan.

B. If the superintendent does not so find, he shall deny issuance of the certificate of authority and notify the applicant thereof in writing stating the reasons for such denial."

Chapter 133 Section 6

Section 6. Section 59A-47-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.20) is amended to read:

"59A-47-22. TRANSFER OF SUBSCRIBERSHIP.--

A. A health care plan may enter into agreements with another health care plan or mutual company similarly engaged in this state or another state or country for transfer of subscribers from one such plan to the other, subject to prior approval of any such agreement by the superintendent. The superintendent shall disapprove any such agreement if he finds on basis of such investigation as he deems advisable that the agreement in reasonable probability would result in loss to the health care plan authorized to do business in this state or is otherwise unfair or inequitable. The superintendent shall approve the agreement if he finds that the transfer of subscribership is to be accompanied by transfer of funds representing reserves in amount adequate to cover all liabilities to be incurred by the assuming health care plan through such transfer, that the transfer meets the applicable requirements of Chapter 59A, Article 34 NMSA 1978 and of the Nonprofit Corporation Act for disposition or distribution of assets and that the agreement is otherwise fair and equitable to the insurers and subscribers involved.

B. The superintendent shall ensure, by imposition of conditions, if necessary, that New Mexico charitable assets are protected and preserved for the benefit of the people of New Mexico."

SENATE BILL 594, AS AMENDED

CHAPTER 134

RELATING TO MUNICIPALITIES; CHANGING THE EFFECTIVE DATE OF CERTAIN MUNICIPAL ORDINANCES.

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

Chapter 134 Section 1

Section 1. Section 3-54-1 NMSA 1978 (being Laws 1983, Chapter 115, Section 1, as amended) is amended to read:

"3-54-1. AUTHORITY TO SELL OR LEASE MUNICIPAL UTILITY FACILITIES OR REAL PROPERTY--NOTICE--REFERENDUM.--

A. A municipality may lease or sell and exchange any municipal utility facilities or real property having a value of twenty-five thousand dollars ($25,000) or less by public or private sale or lease any municipal facility or real property of any value normally leased in the regular operations of such facility or real property, and such sale or lease shall not be subject to referendum.

B. A municipality may lease or sell and exchange any municipal utility facilities or real property having an appraised value in excess of twenty-five thousand dollars ($25,000) by public or private sale or lease, subject to the referendum provisions set forth in this section. The value of municipal utility facilities or real property to be leased or sold and exchanged shall be determined by the appraised value of the municipal utility facilities or real property and not by the value of the lease. An appraisal shall be made by a qualified appraiser and submitted in writing to the governing body. If the sale price is less than the appraised value, the governing body shall cause a detailed written explanation of that difference to be prepared, and the written explanation shall be made available to any interested member of the public upon demand.

C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the proposed sale, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed public sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and in accordance with the provisions of Subsection J of Section 3-1-2 NMSA 1978.

D. Any sale or lease of municipal utility facilities or real property entered into pursuant to Subsection B of this section shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to this section. The ordinance shall be published prior to adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978 and

Section 3-17-3 NMSA 1978 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978. Such publications shall concisely set forth at least:

(1) the terms of the sale or lease;

(2) the appraised value of the municipal utility facilities or real property;

(3) the time and manner of payments on the lease or sale;

(4) the amount of the lease or sale;

(5) the identities of the purchasers or lessees; and

(6) the purpose for the municipality making the lease or sale.

E. In order to call for a referendum election on a sale or lease ordinance, a petition shall be filed with the municipal clerk:

(1) no later than thirty days after the adoption of the sale or lease ordinance;

(2) containing the names, addresses and signatures of at least fifteen percent of the qualified electors of the municipality; and

(3) containing the following heading on each page of the petition reprinted as follows:

"PETITION FOR A REFERENDUM

We, the undersigned registered voters of _______________ (insert name of municipality) petition the governing body of ___________________ (insert name of municipality) to conduct a referendum election on ordinance number __________________. Ordinance number _________________________ would cause a _________________________ (insert "sale" or "lease") of municipal _____________________ (insert "real property" or "utility facilities").

Date Name (printed) Address Signature."

F. Section 3-1-5 NMSA 1978 shall apply to all petitions filed calling for a referendum election on a sale or lease ordinance.

G. If the municipal clerk certifies to the municipal governing body that the petition does contain the minimum number of valid names, addresses and signatures required to call a referendum election on the sale or lease ordinance, the municipal governing body shall adopt an election resolution within fourteen days after the date the clerk makes such certification, calling for a referendum election on the sale or lease ordinance. The

election resolution shall be adopted and published pursuant to the provisions of the Municipal Election Code governing special elections and shall also concisely set forth:

(1) the terms of the sale or lease;

(2) the appraised value of the municipal utility facilities or real property;

(3) the time and manner of payments on the lease or sale;

(4) the amount of the lease or sale;

(5) the identities of all purchasers or lessees; and

(6) the purpose for the municipality making the lease or sale.

H. The referendum election on the sale or lease ordinance shall be held not later than ninety days after the election resolution is adopted. Such election shall be held at a special or regular municipal election and shall be conducted as a special election in the manner provided in the Municipal Election Code. Any qualified elector of the municipality may vote in such a referendum election.

I. If a majority of the votes cast are to approve the sale or lease ordinance, the sale or lease ordinance shall be effective after the election results have been canvassed and certified. If a majority of the votes cast are to disapprove the sale or lease ordinance, the ordinance shall not be effective."

SENATE BILL 611, AS AMENDED

CHAPTER 135

RELATING TO MUNICIPALITIES; REQUIRING REPRESENTATIVE MANAGEMENT AND OPERATION OF MUNICIPAL UTILITIES; AMENDING THE NMSA 1978.

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

Chapter 135 Section 1

Section 1. Section 3-23-10 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-22-10, as amended) is amended to read:

"3-23-10. MUNICIPAL UTILITY--BOARD OF UTILITY COMMISSIONERS.--

A. A municipality may establish a municipal board of utility commissioners to manage and operate a municipal utility. The board of utility commissioners is responsible for the administration of the affairs of the utility. Members of the board of utility commissioners shall be appointed by the mayor with the consent of the governing body, and, except in

the case of a class H county, each shall represent a commissioner district within the area served by the utility.

B. The ordinance establishing the board of utility commissioners:

(1) shall fix the number of commissioners;

(2) except in the case of a class H county, shall establish commissioner districts within the municipal utility's service area, with each district representing approximately the same number of consumers of the municipal utility;

(3) shall set the term of office for commissioners, which shall not exceed six years;

(4) may provide for staggered terms of office;

(5) shall establish the duties and jurisdiction of the board with respect to the management and administration of the affairs of the utility; and

(6) may contain such terms and provisions, consistent with law, that are reasonably necessary or desirable to accomplish the purposes assigned to the board.

C. Any municipality establishing a board of utility commissioners shall retain and possess all powers with respect to the utility for which the board is established as are consistent with the laws and constitution of New Mexico."

SENATE BILL 642, AS AMENDED

CHAPTER 136

RELATING TO MUNICIPALITIES; PROVIDING FOR MINIMUM REQUIREMENTS FOR INCORPORATION.

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

Chapter 136 Section 1

Section 1. Section 3-2-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-2-2, as amended) is amended to read:

"3-2-2. CHARACTERISTICS OF TERRITORY PROPOSED TO BE INCORPORATED AS A MUNICIPALITY.--

A. Any territory proposed to be incorporated as a municipality shall:

(1) not be within the boundary of another municipality;

(2) have a population density of not less than one person per acre, except for a class B county with net taxable value of property for property tax purposes in 1990 of over ninety-five million dollars ($95,000,000) and a population of less than ten thousand according to the 1990 federal decennial census and where the population density of the territory proposed to be incorporated is not less than one person per four acres;

(3) contain not less than one hundred fifty persons; and

(4) contain a sufficient assessed value of real property and a sufficient number of businesses so that the proposed municipality will contain a sufficient tax base to enable it to provide a clerk-treasurer, a police officer and office space for the municipal government within one year of incorporation.

B. In the alternative to the requirements of Paragraph 2 of Subsection A of this section, any territory proposed to be incorporated as a municipality shall:

(1) contain within its boundaries a resort area having more than fifty thousand visitors a year; and

(2) have more than one hundred fifty single-family residences, as shown by the property tax rolls."

SENATE BILL 682

CHAPTER 137

RELATING TO SUBDIVISIONS; MODIFYING THE REQUIREMENTS FOR APPROVAL OF FINAL PLATS THROUGH THE SUBDIVISION PROCESS.

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

Chapter 137 Section 1

Section 1. Section 3-20-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-19-7) is amended to read:

"3-20-7. SUBDIVISION WITHIN THE PLATTING JURISDICTION OF A MUNICIPALITY--APPROVAL OF THE PLANNING AUTHORITY--PROCEDURE--FILING FEE--NOTICE OF HEARING.--

A. Before a plat of any subdivision within the jurisdiction of a municipality is filed in the office of the county clerk, the plat shall be submitted to the planning authority of the municipality having jurisdiction for approval.

B. The rules and regulations of the planning authority shall state:

(1) the scale and manner in which the plat is to be prepared;

(2) the number of copies of the plat which shall accompany the original plat;

(3) what other information shall accompany the plat; and

(4) the standards and regulations for subdivisions to which the planning authority may require the subdivider to conform.

C. The person submitting the plat shall pay the necessary filing fee to the municipality, and the planning authority, after approval and endorsement, shall file the plat with the county clerk. If the plat is not approved, the planning authority shall return the filing fee and the plat to the person submitting the plat.

D. A plat submitted for approval by the planning authority shall contain the name and address of the person to whom a notice of hearing shall be sent. Notice of the time and place of a hearing on a plat shall be sent by mail to the address on the plat not less than five days before the day of the hearing. No plat shall be acted upon without a public hearing unless the requirement that a public hearing be held is waived by the person seeking approval of the plat.

E. The planning authority of a municipality shall approve or disapprove a plat within thirty-five days of the day of final submission of the plat. If the planning authority does not act within thirty-five days, the plat is deemed to be approved, and upon demand, the planning authority shall issue a certificate approving the plat. The person seeking approval of the plat may waive this requirement and agree to an extension of this time period. The reason for disapproval of a plat shall be entered upon the recordings of the planning authority.

F. No plat of territory within the planning and platting jurisdiction of a municipality shall be filed and recorded unless it has been approved by the planning commission or the governing body of the municipality pursuant to regulations and procedures adopted by ordinance of the governing body."

SENATE BILL 721, AS AMENDED

CHAPTER 138

RELATING TO TELECOMMUNICATIONS; PROHIBITING CRAMMING AND SLAMMING; ABSOLVING CUSTOMERS OF CERTAIN LIABILITIES; PROVIDING POWERS AND DUTIES OF THE PUBLIC REGULATION COMMISSION; PROVIDING FOR SUSPENSION OR REVOCATION OF CERTIFICATES OF AUTHORITY OR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; LIMITING CAUSES OF ACTION; PROVIDING PENALTIES.

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

Chapter 138 Section 1

Section 1. SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Cramming and Slamming Act".

Chapter 138 Section 2

Section 2. DEFINITIONS.--As used in the Cramming and Slamming Act:

A. "billing aggregator" means a person that bills customers for goods or services provided by others and that uses a local exchange company as a billing agent;

B. "commission" means the public regulation commission;

C. "cramming" means:

(1) charging a customer for telecommunications services that were not authorized by the customer;

(2) charging a customer for goods or services that are not telecommunications services; or

(3) using a sweepstakes, contest or drawing entry form as authorization to change or add telecommunications services to a customer's telephone bill;

D. "customer" means the person whose name appears on the telephone bill or the person responsible for payment of the telephone bill;

E. "local exchange company" means a provider that provides local exchange services;

F. "local exchange services" means the transmission of two-way interactive communications within a local exchange area described in maps, tariffs or rate schedules filed with the commission where local exchange rates apply;

G. "provider" means a telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular or other wireless telecommunications service company, cable television service, telecommunications reseller, billing aggregator or other person that bills directly or has a billing contract with a local exchange company;

H. "slamming" means:

(1) changing a customer's provider without the customer's authorization; or

(2) using a sweepstakes, contest or drawing entry form as authorization to change a customer's provider; and

I. "telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means or goods and services related to the transmission of information that are provided by the provider; provided that a good or service that does not meet the definition of "telecommunications service" does not become a telecommunications service merely because it is bundled with a telecommunications service for marketing or billing purposes.

Chapter 138 Section 3

Section 3. COMMISSION POWERS AND DUTIES.--

A. The commission has jurisdiction over a billing aggregator to the extent of the billing aggregator's participation in billing for telecommunications services or other goods or services through a customer's telephone bill. Billing aggregators are subject to the provisions of the Cramming and Slamming Act.

B. The commission shall enforce the provisions of the Cramming and Slamming Act against anyone regulated in whole or in part by the commission or over whom the commission is given regulatory authority by state or federal law.

C. The commission may hold a provider liable for the actions of its employees, officers, affiliates and agents.

Chapter 138 Section 4

Section 4. RULES TO IMPLEMENT ACT.--The commission shall promulgate:

A. rules on what constitutes authorization of a change or addition to telecommunications services or change in provider for the purposes of determining cramming or slamming, including consideration of the rules on authorization adopted by the federal communications commission;

B. rules and standards on responsibilities of parties in cramming and slamming;

C. rules to establish an expedited consideration process for resolution of complaints filed with the commission, including the filing and investigation of complaints; and

D. other rules needed to implement the provisions of the Cramming and Slamming Act.

Chapter 138 Section 5

Section 5. COMPLAINTS FILED WITH COMMISSION--RULES-- ADMINISTRATIVE PENALTIES.--

A. The following acts are prohibited:

(1) cramming or slamming; and

(2) disconnecting or threatening to disconnect a customer's local exchange service because the customer refuses to pay charges resulting from cramming or slamming and the local exchange company has been notified of the cramming or slamming.

B. A customer or provider may file a complaint with the commission alleging cramming or slamming. A customer may file a complaint alleging disconnection or threats of disconnection to local exchange service. The commission may combine complaints.

C. If the commission finds after investigation and hearing that a provider engaged in cramming or slamming or disconnected or threatened to disconnect a customer's local exchange service, it may:

(1) assess an administrative penalty not to exceed ten thousand dollars ($10,000) for each occurrence of cramming or slamming or for each disconnection or threat to disconnect; or

(2) after other sanctions have failed, suspend or revoke the provider's certificate of authority or certificate of public convenience and necessity for a deliberate pattern of cramming or slamming or disconnection or threat of disconnection.

D. A person aggrieved by an order of the commission pursuant to this section may appeal to the district court as provided in Section 39-3-1.1 NMSA 1978.

E. The remedies and penalties provided for in the Cramming and Slamming Act are in addition to any other penalties that may be imposed pursuant to any other state law or any other remedies available to consumers.

Chapter 138 Section 6

Section 6. CRAMMING OR SLAMMING--CUSTOMER ABSOLUTION.--

A. A customer who is crammed or slammed is absolved of liability for charges resulting from the cramming or slamming during the first ninety days after the cramming or slamming appeared on the customer's telephone bill. Nothing in this subsection affects the local exchange company or other billing agent from collecting credited amounts from the provider that crammed or slammed.

B. The customer may contact his local exchange company, his authorized provider or the unauthorized provider to report a cramming or slamming. The contacted provider shall notify the local exchange company promptly about the customer's allegation of cramming or slamming.

C. The commission shall promulgate rules that govern procedures for how disputed charges or changes are investigated and paid to the proper provider.

Chapter 138 Section 7

Section 7. CHANGE IN SERVICE OR PROVIDER--TELEPHONE BILLS.--

A. A new charge for telecommunications service or a change in telecommunications provider shall be conspicuously indicated on the customer's telephone bill in clear, unambiguous language and easily legible type. Charges for local exchange service shall be itemized separately from charges for other telecommunications services.

B. The local exchange company that serves as the billing agent shall not allocate a customer's payment to a disputed charge or change until the charge or change has been verified.

Chapter 138 Section 8

Section 8. SALES TO BE IN CLEAR LANGUAGE--FALSE OR MISLEADING INFORMATION--VERIFICATION--UNAUTHORIZED CHARGE OR CHANGE--WRITTEN NOTIFICATION.--

A. As used in this section, "seller" means a provider or other person that sells telecommunications services.

B. The provider shall approve all sales scripts and written materials used by its sellers, including contract sellers.

C. A seller that attempts to persuade a customer to purchase telecommunications services or change his provider shall make adequate inquiry to reasonably ensure that he is talking to the customer. The seller shall also, at a minimum, clearly and unambiguously:

(1) identify himself and the company for which he works;

(2) identify the provider that he is asking the customer to use or the telecommunications service he is asking the customer to purchase; and

(3) explain the material terms and price of the purchase or change in provider.

D. A seller shall not use false or misleading information or tactics that would be considered by a prudent person to be pressure tactics to convince the customer to purchase a telecommunications service or change a provider.

E. The commission shall prescribe by rule the requirements for clearly and unambiguously selling and verifying the sale of telecommunications services or providers.

Chapter 138 Section 9

Section 9. CRAMMING OR SLAMMING--DAMAGE TO CREDIT--PENALTY--CIVIL ACTION BARRED.--

A. A person shall not injure or threaten to injure a customer's credit because the customer refuses to pay charges resulting from cramming or slamming. A person who violates the provisions of this section is guilty of a fourth degree felony and shall be sentenced as follows:

(1) for threatening to injure a customer's credit, a fine not to exceed one thousand dollars ($1,000) per occurrence; and

(2) for injuring a customer's credit by providing a false, misleading or negative report about the customer to a credit reporting agency, a fine not to exceed ten thousand dollars ($10,000) per occurrence.

B. A person is barred from bringing a civil action against a customer to collect for charges resulting from cramming or slamming.

Chapter 138 Section 10

Section 10. TEMPORARY PROVISION--RULES.--It is the intent of the legislature that the public regulation commission begin its rulemaking process in time to have rules required by Section 4 of the Cramming and Slamming Act adopted and promulgated by July 1, 1999.

Chapter 138 Section 11

Section 11. APPLICABILITY.--This act applies to telecommunications services provided to customers on or after July 1, 1999.

Chapter 138 Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 9 of this act is July 1, 1999.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 36 & 404, AS AMENDED

CHAPTER 139

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT.

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

Chapter 139 Section 1

Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972, Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement board or the local board shall require:

(1) any person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the department or the local agency prior to such construction or modification; and

(2) any person intending to operate any source for which an operating permit is required by the 1990 amendments to the federal act, except as otherwise specifically provided by regulation, to obtain an operating permit from the department or the local agency.

B. Regulations adopted by the environmental improvement board or the local board shall include at least the following provisions:

(1) requirements for the submission of relevant information, including but not limited to information the department or the local agency deems necessary to determine that regulations and standards under the Air Quality Control Act or the federal act will not be violated;

(2) specification of the deadlines for processing permit applications; provided the deadline for a final decision by the department or the local agency on a construction permit application may not exceed:

(a) ninety days after the application is determined to be administratively complete, if the application is not subject to requirements for prevention of significant deterioration, unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings; or

(b) one hundred eighty days after the application is determined to be administratively complete, if the application is subject to requirements for prevention of significant deterioration, unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings;

(3) that if the department or local agency fails to take final action on a construction permit application within the deadlines specified in Paragraph (2) of this subsection, the department or local agency shall notify the applicant in writing that an extension of time is required to process the application and specify in detail the grounds for the extension;

(4) a description of elements required before the department or local agency shall deem an application administratively complete;

(5) specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit; provided the permit regulations adopted:

(a) by the environmental improvement board shall include provisions governing notice to nearby states; and

(b) by any local board shall include provisions requiring that notice be given to the department of all permit applications by any source that emits, or has a potential emission rate of, one hundred tons per year or more of any regulated air contaminant, including any source of fugitive emissions of each regulated air contaminant, at least sixty days prior to the date on which construction or major modification is to commence;

(6) a schedule of construction permit fees sufficient to cover the reasonable costs of:

(a) reviewing and acting upon any application for such permit; and

(b) implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action;

(7) a schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the federal act;

(8) a method for accelerated permit processing that may be requested at the sole discretion of the applicant at the time the applicant submits a construction permit application and that:

(a) allows the department or local agency to contract with qualified outside firms to assist the department or local agency in its accelerated review of the construction permit application provided that the department or local agency can contract with a qualified firm that does not have a conflict of interest; and

(b) establishes a process for the department or local agency to account for the expenditure of the accelerated permit processing fees;

(9) allows for additional permit application fees, sufficient to cover the reasonable costs of an accelerated permit application review process. Before the applicant is notified that the permit application has been determined to be complete, the department or local board shall give the applicant a reasonable estimate of costs of an accelerated permit application review process;

(10) specification of the maximum length of time for which a permit shall be valid; provided that for an operating permit such period may not exceed five years; and

(11) for an operating permit only:

(a) provisions consistent with Sections 502(b) and 505(b) of the federal act providing: 1) notice to and review and comment by the United States environmental protection agency; and 2) that if the department or local agency receives notice of objection from the United States environmental protection agency before the operating permit is issued, the department or the local agency shall not issue the permit unless it is revised and issued under Section 505(c) of the federal act;

(b) provisions governing renewal of the operating permit; and

(c) specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

C. The department or the local agency may deny any application for:

(1) a construction permit if it appears that the construction or modification will not meet applicable requirements of the Air Quality Control Act, the federal act or any regulation adopted pursuant to either; or

(2) an operating permit if:

(a) the source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the environmental improvement board or the local board;

(b) it appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or

(c) any other provision of the Air Quality Control Act or the federal act will be violated.

D. The department or the local agency may specify conditions to any permit granted under this section, including:

(1) for a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control Act, the federal act and regulations promulgated pursuant to either; and

(2) for an operating permit:

(a) imposition of individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act

and the federal act or the emission rate specified in the operating permit application, whichever is more stringent;

(b) compliance with applicable federal standards of performance;

(c) imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

(d) any combination of the conditions listed in this paragraph.

E. This section does not authorize the department or the local agency to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, state regulations and permit conditions may be met by machinery, devices or equipment otherwise available.

F. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable regulations of the environmental improvement board or the local board. Any conditions placed upon a permit by the department or the local agency shall be enforceable to the same extent as a regulation of its board.

G. Any person who participated in a permitting action before the department or the local agency shall be notified by the department or the local agency of the action taken and the reasons for the action. Notification of the applicant shall be by certified mail.

H. Any person who participated in a permitting action before the department or the local agency and who is adversely affected by such permitting action may file a petition for hearing before the environmental improvement board or the local board. The petition shall be made in writing to the environmental improvement board or the local board within thirty days from the date notice is given of the department's or the local agency's action. Unless a timely petition for hearing is made, the decision of the department or the local agency shall be final.

I. If a timely petition for hearing is made, the environmental improvement board or the local board shall hold a hearing within sixty days after receipt of the petition. The environmental improvement board or the local board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the environmental improvement board or the local board to substantially affect the public interest, the environmental improvement board or the local board shall ensure that the public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

J. The environmental improvement board or the local board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

K. The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the environmental improvement board or the local board shall sustain, modify or reverse the action of the department or the local agency respectively.

L. Notwithstanding any other provision of law and subject to the provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the department, the environmental improvement board, the local agency, the local board or the court of appeals that a new source will or will not meet applicable local, state and federal air pollution standards and regulations shall be conclusive and is binding on every other state agency and as an issue before any other state agency shall be deemed resolved in accordance with that final decision.

M. Subject to the provisions of Section 74-2-4 NMSA 1978, if the local board has adopted a permit regulation pursuant to this section, persons constructing or modifying any new source within the boundaries of the local authority shall obtain a permit from the local agency and not from the department.

N. Fees collected pursuant to this section shall be deposited in:

(1) the state air quality permit fund created by Section 74-2-15 NMSA 1978 if collected by the department; or

(2) a fund created pursuant to Section 74-2-16 NMSA 1978 if collected by a local agency pursuant to a permit regulation adopted by the local board pursuant to this section."

Chapter 139 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2000.

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 203 & 325, AS AMENDED

CHAPTER 140

RELATING TO EMERGENCY RELIEF; DEFINING RESOURCES AND SERVICES THAT MAY BE PROVIDED BY THE STATE AFTER THE DECLARATION OF A DISASTER OR EMERGENCY.

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

Chapter 140 Section 1

Section 1. Section 6-7-3 NMSA 1978 (being Laws 1955, Chapter 185, Section 3, as amended) is amended to read:

"6-7-3. EXPENDITURE OF FUNDS--MANNER.--The money appropriated by Sections 6-7-1 and 6-7-2 NMSA 1978 shall be expended for disaster relief for any disaster declared by the governor to be of such magnitude as to be beyond local control and requiring the resources of the state. The funds shall be expended by the governor or any agent or agency designated by him for those purposes, either as a state project or for securing matching federal funds. The money shall be paid out upon warrants drawn by the secretary of finance and administration upon vouchers approved by the governor or an agent or agency designated by him for that purpose. As used in this section, "state project" means an expenditure by a state agency to provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control. "State project" may include any expenditure on a temporary, emergency basis for lodging, sheltering, health care, food, any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare."

Chapter 140 Section 2

Section 2. Section 12-10-4 NMSA 1978 (being Laws 1959, Chapter 190, Section 5, as amended) is amended to read:

"12-10-4. CIVIL EMERGENCY PREPAREDNESS--POWERS OF THE GOVERNOR.--

A. The governor shall have general direction and control of the activities of the emergency planning and coordination bureau and shall be responsible for carrying out the provisions of the State Civil Emergency Preparedness Act and, in the event of any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state shall exercise direction and control over any and all state forces and resources engaged in emergency operations or related civil emergency preparedness functions within the state.

B. In carrying out the provisions of the State Civil Emergency Preparedness Act, the governor is authorized to:

(1) cooperate with the federal government and agree to carry out civil emergency preparedness responsibilities delegated in accordance with existing federal laws and policies and cooperate with other states and with private agencies in all matters relating to the civil emergency preparedness of the state and nation;

(2) issue, amend or rescind the necessary orders, regulations and procedures to carry out the provisions of the State Civil Emergency Preparedness Act;

(3) provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, for lodging, sheltering, health care, food, any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare;

(4) prepare a comprehensive plan and program for the civil emergency preparedness of the state and to integrate the state plan and program with the civil emergency preparedness plans and programs of the federal government and other states and to coordinate the preparation of plans and programs for civil emergency preparedness by the political subdivisions of this state;

(5) procure supplies and equipment, to institute training programs and public information programs and to take all necessary preparatory actions, including the partial or full mobilization of state and local government forces and resources in advance of actual disaster, to ensure the furnishing of adequately trained and equipped emergency forces of government and auxiliary personnel to cope with disasters resulting from enemy attack or other causes; and

(6) enter into mutual aid agreements with other states and to coordinate mutual aid agreements between political subdivisions of the state."

Chapter 140 Section 3

Section 3. Section 20-2-3 NMSA 1978 (being Laws 1987, Chapter 318, Section 10) is amended to read:

"20-2-3. GOVERNOR--POWER TO CALL OUT MILITIA.--

A. The governor may, in case of insurrection, invasion, riot or breach of the peace or of imminent danger thereof or in case of other emergency, order into active service of the state the militia or any components or parts thereof that have not been called into federal service. As used in this section, "emergency" includes any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state.

B. In case of any breach of the peace, tumult, riot or resistance to process of this state or imminent danger thereof, the sheriff of a county may call for aid from the governor as commander-in-chief of the national guard. If it appears to the governor that the power of the county is insufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of the county or to overcome the resistance to process of this state, the governor shall, on application of the sheriff, order out such military force as is necessary.

C. When any portion of the militia is called out for the purpose of suppressing an unlawful or riotous assembly, the commander of the troops shall cooperate with the civil officers to the fullest extent consistent with the accomplishment of the object for which the troops were called. The civil officials may express to the commander of the troops the general or specific objective that the civil officials desire to accomplish, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed to accomplish the object specified by the civil officers shall be left solely to the commander of the troops present on duty.

D. When any portion of the militia is ordered into active service pursuant to this section in case of an emergency, the militia may provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, for lodging, sheltering, health care, food, any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare.

E. In the event of the exercise by the governor of the powers under this section, the governor shall first utilize the personnel and assets of the national guard and only in their absence or insufficiency utilize the personnel and assets of the state defense force."

HOUSE BILL 251, AS AMENDED

CHAPTER 141

RELATING TO EMERGENCY CARE; CLARIFYING THE DEFINITION OF EMERGENCY.

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

Chapter 141 Section 1

Section 1. Section 24-10-4 NMSA 1978 (being Laws 1963, Chapter 59, Section 2) is amended to read:

"24-10-4. EMERGENCY DEFINED.--As used in Sections

24-10-3 and 24-10-4 NMSA 1978, "emergency" means an unexpected occurrence of injury or illness occurring in public or private places to a person that results from:

A. motor vehicle accidents and collisions;

B. acts of God; and

C. other accidents and events of similar nature."

HOUSE BILL 274, AS AMENDED

CHAPTER 142

RELATING TO DOMESTIC ABUSE; PROVIDING FOR THE ISSUANCE OF EX PARTE EMERGENCY ORDERS OF PROTECTION; AMENDING AND ENACTING SECTIONS OF THE FAMILY VIOLENCE PROTECTION ACT.

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

Chapter 142 Section 1

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

"40-13-1. SHORT TITLE.--Chapter 40, Article 13 NMSA 1978 may be cited as the "Family Violence Protection Act"."

Chapter 142 Section 2

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

"EX PARTE EMERGENCY ORDERS OF PROTECTION.--

A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the petitioner or the petitioner's child is in immediate danger of domestic abuse following an incident of domestic abuse by a household member. The written statement shall include the location and telephone number of the respondent, if known.

B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:

(1) if necessary, pursuant to the judge's or judicial officer's oral approval, write and sign the order on an approved form;

(2) if possible, immediately serve a signed copy of the order on the respondent and complete the appropriate affidavit of service;

(3) immediately provide the petitioner with a signed copy of the order; and

(4) provide the original order to the court by the close of business on the next judicial day.

C. The court may grant the following relief in an emergency order for protection upon a probable cause finding that domestic abuse has occurred:

(1) enjoin the respondent from threatening to commit or committing acts of domestic abuse against the petitioner or any designated household members;

(2) enjoin the respondent from any contact with the petitioner, including harassing, telephoning, contacting or otherwise communicating with the petitioner; and

(3) grant temporary custody of any minor child in common with the petitioner and the respondent to the petitioner, if necessary.

D. A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.

E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.

F. A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.

G. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.

H. Emergency orders of protection are enforceable in the same manner as other orders of protection that are issued pursuant to the provisions of the Family Violence Protection Act."

Chapter 142 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 329, AS AMENDED

CHAPTER 143

RELATING TO MOTOR VEHICLES; AMENDING AN EXCEPTION TO THE OPEN CONTAINER LAW; AMENDING A SECTION OF THE MOTOR VEHICLE CODE.

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

Chapter 143 Section 1

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

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

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

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

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

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

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

(3) a truck camper; or

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

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not apply to any passenger in a bus, taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act or proper legal authority.

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

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

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

(3) any person who is employed by a person licensed by the Liquor Control Act, while discharging his duties as an employee."

Chapter 143 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 355

CHAPTER 144

RELATING TO PROPERTY; PROTECTING PUBLIC OFFICIALS, PUBLIC EMPLOYEES AND CITIZENS AGAINST NONCONSENSUAL COMMON LAW LIENS; ENACTING THE LIEN PROTECTION EFFICIENCY ACT.

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

Chapter 144 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Lien Protection Efficiency Act".

Chapter 144 Section 2

Section 2. FINDINGS--PURPOSE.--

A. The legislature finds:

(1) that there is a problem with the presentation for filing or recording of invalid instruments that purport to affect the real or personal property interests of persons, including elected or appointed officials and employees of state, local and federal government. These instruments, which have no basis in fact or law, have serious disruptive effects on property interests and title, appear on title searches and other disclosures based on public records and are costly and time-consuming to expunge. These instruments have serious disruptive effects on the conduct of government business and are costly and time-consuming to both government entities and individual officials and employees;

(2) that officials and employees authorized by law to accept for filing or recording liens, deeds, instruments, judgments or other documents purporting to establish nonconsensual common law liens do not have discretionary authority or mechanisms to prevent the filing, recording or disclosure of frivolous lien claims if the documents comply with certain minimum format requirements. It would be inefficient and would require substantial government expenditure to have the legal sufficiency of documents submitted for filing or recording determined in advance of acceptance; and

(3) that it is necessary and in the best interest of New Mexico and its citizens to provide a means to relieve this problem, to prevent the filing, recording or disclosure of frivolous lien claims and to authorize actions to void frivolous lien claims.

B. The purpose of the Lien Protection Efficiency Act is to provide for the efficient filing and recording of documents and the protection of public officials and employees and the citizens of the state against nonconsensual common law liens by imposing limitations on the circumstances in which nonconsensual common law liens may be recognized in the state.

Chapter 144 Section 3

Section 3. DEFINITIONS.--As used in the Lien Protection Efficiency Act:

A. "court" means:

(1) a court created by the constitution of the United States or pursuant to federal law, including the United States supreme court, the United States courts of appeals, the United States district or administrative courts or other federal courts of inferior jurisdiction, but does not include administrative adjudicative bodies;

(2) a court created by the constitution of New Mexico or pursuant to New Mexico law, including the supreme court, the court of appeals, district courts, magistrate courts, metropolitan courts and municipal courts, but does not include administrative adjudicative bodies; and

(3) a court comparable to any of those listed in Paragraph (2) of this subsection that is created by the constitution of another state or pursuant to the state law of another state;

B. "federal official or employee" means an appointed or elected official or an employee of a federal agency, board, commission or department in a branch of the federal government;

C. "filing officer" means the secretary of state; the clerk of a county or court; or a state, local or federal official or employee authorized by law to accept for filing as a public record a lien, deed, instrument, judgment or other document, whether paper, electronic or in another form;

D. "lien" means an encumbrance on property as security for the payment of a debt;

E. "nonconsensual common law lien" means a document, regardless of self-description, that purports to assert a lien against the assets, real or personal, of a person that:

(1) is not expressly provided for by a specific state or federal statute;

(2) does not depend upon the consent of the owner of the property affected or the existence of a contract for its existence; or

(3) is not an equitable or constructive lien imposed by a court of competent jurisdiction; and

F. "state or local official or employee" means an appointed or elected official or an employee of a state agency, board, commission, department in any branch of state government, or state institution of higher education, or a school district, political subdivision or unit of local government of this state.

Chapter 144 Section 4

Section 4. CONSTRUCTION.--

A. The Lien Protection Efficiency Act shall not be construed to create a lien or interest in property not otherwise existing under state or federal law.

B. The Lien Protection Efficiency Act is not intended to affect a lien provided for by statute, a consensual lien now or hereafter recognized under common law of the state or the ability of the courts to impose equitable or constructive liens.

Chapter 144 Section 5

Section 5. NON-ENFORCEABILITY OF NONCONSENSUAL COMMON LAW LIENS.-- Nonconsensual common law liens against real property shall not be recognized or be enforceable. Nonconsensual common law liens claimed against personal property shall not be recognized or be enforceable if, at the time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property.

Chapter 144 Section 6

Section 6. INVALIDITY OF CLAIM OF LIEN AGAINST A STATE OR LOCAL OFFICIAL OR EMPLOYEE OR A FEDERAL OFFICIAL OR EMPLOYEE--FILING OF NOTICE OF INVALID LIEN.--

A. A claim of lien against a state or local official or employee or a federal official or employee based on the performance or nonperformance of that official's or employee's duties shall be invalid, unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien, or unless a specific statute authorizes the filing of the lien.

B. If a claim of lien, as described in Subsection A of this section, has been accepted for filing, the filing officer shall accept for filing a notice of invalid lien signed and submitted by an assistant attorney general representing the state agency, board, commission or department of which the individual is an official or employee; an attorney representing

the state institution of higher education, school district, political subdivision or unit of local government of this state of which the individual is an official or employee; or an assistant United States attorney representing the federal agency of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at that person's last known address.

Chapter 144 Section 7

Section 7. NO DUTY TO ACCEPT OR TO DISCLOSE A NONCONSENSUAL COMMON LAW LIEN--IMMUNITY FROM LIABILITY.--

A. A filing officer does not have a duty to accept for filing or recording a claim of lien, unless the lien is authorized by statute or imposed by a court of competent jurisdiction having jurisdiction over property affected by the lien.

B. A filing officer does not have a duty to accept for filing or recording a claim of lien against a state or local official or employee or a federal official or employee based on the performance or nonperformance of that official's or employee's duties, unless accompanied by a specific order from a court of competent jurisdiction having jurisdiction over property affected by the lien, authorizing the filing of the lien.

C. A filing officer does not have a duty to disclose an instrument of record or filing that attempts to give notice of a nonconsensual common law lien. This subsection does not relieve a filing officer of a duty that otherwise may exist to disclose a claim of a lien authorized by statute or imposed by order of a court of competent jurisdiction having jurisdiction over property affected by the lien. The existence of a claim of a nonconsensual common law lien in the public record does not constitute a defect in the title of or an encumbrance on the real property described and does not affect the marketability of the title to the real property.

D. A filing officer shall not be liable for damages arising from a refusal to record or file or a failure to disclose any claim of a nonconsensual common law lien of record pursuant to this section.

E. A filing officer shall not be liable for damages arising from the acceptance for filing of a claim of lien as described in Subsection B of this section, or for the acceptance for filing of a notice of invalid lien pursuant to Subsection B of Section 6 of the Lien Protection Efficiency Act.

F. Except as otherwise provided by law, a filing officer shall not be required to defend decisions to accept or reject documents pursuant to Section 6 of the Lien Protection Efficiency Act.

Chapter 144 Section 8

Section 8. ACTION TO VOID LIEN--ORDER TO SHOW CAUSE--SERVICE OF PROCESS.--

A. A person whose real or personal property is subject to a recorded claim of a nonconsensual common law lien and who believes the claim of lien is invalid may petition the district court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the district court, at a time no earlier than six days nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by Section 9 of the Lien Protection Efficiency Act should not be granted. The petition shall state the grounds upon which relief is requested and shall be supported by the affidavit of the petitioner or petitioner's attorney setting forth a concise statement of the facts upon which the claim for relief is based.

B. An order rendered pursuant to the petition and directing the lien claimant to appear shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of the lien shall be declared void ab initio and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner or any other party to the proceeding, including reasonable attorney fees, and damages as set forth in Section 9 of the Lien Protection Efficiency Act.

C. The petition and order shall be served upon the lien claimant by personal service, or, when the district court determines that service by mail is likely to give actual notice, the district court may order that service be made by a person over eighteen years of age who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant's last known address or any other address determined by the district court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes shall bear the return address of the sender.

Chapter 144 Section 9

Section 9. ORDERS--LIABILITY FOR COSTS AND ATTORNEY FEES--DAMAGES.--

A. If, in proceedings pursuant to Section 8 of the Lien Protection Efficiency Act, the lien claimant fails to appear at the time and place noted or if the lien claimant appears and the district court determines that the claim of lien is invalid, the district court shall issue an order declaring the lien void ab initio, releasing the lien, refunding any court docketing or filing fee to the petitioner and awarding other costs and reasonable attorney fees and damages as set forth in this section to the petitioner or any other party to the proceeding, to be paid by the lien claimant.

B. If the district court determines that the claim of lien is valid, the district court shall issue an order so stating and may award costs and reasonable attorney fees to the lien claimant to be paid by the petitioner.

C. A person who offers to have filed and recorded in the office of a filing officer a document purporting to create a nonconsensual common law lien against real or personal property, knowing or having reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid, shall be liable to the owner of the property affected for actual damages or five thousand dollars ($5,000), whichever is greater, plus costs and reasonable attorney fees as provided in this section.

D. A grantee or other person purportedly benefited by a filed or recorded document that creates a nonconsensual common law lien against real or personal property, knowing or having reason to know that the filed or recorded document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid, who willfully refuses to release the filed or recorded document upon request of the owner of the property affected, shall be liable to the owner for actual damages or five thousand dollars ($5,000), whichever is greater, plus costs and reasonable attorney fees as provided in this section.

E. A certified copy of an order rendered pursuant to this section shall be filed by the clerk of the district court in the office of the appropriate filing officer.

Chapter 144 Section 10

Section 10. SEVERABILITY.--If any part or application of the Lien Protection Efficiency Act is held invalid, the remainder of that act or its application to other situations or persons shall not be affected.

Chapter 144 Section 11

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 366

CHAPTER 145

RELATING TO MOTOR VEHICLE INSURANCE; PROVIDING FOR NOTICE OF MOTOR VEHICLE INSURANCE CANCELLATION OR TERMINATION; PROVIDING FOR SUSPENSION OF MOTOR VEHICLE REGISTRATION; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 145 Section 1

Section 1. Section 66-5-205.1 NMSA 1978 (being Laws 1989, Chapter 214, Section 1, as amended) is amended to read:

"66-5-205.1. UNINSURED MOTORIST CITATION--REQUIREMENTS TO BE FOLLOWED AT TIME OF ACCIDENT--SUBSEQUENT PROCEDURES--INSURER NOTIFICATION REQUIREMENTS--SUSPENSION PROCEDURES.--

A. When a law enforcement officer issues a driver who is involved in an accident a citation for failure to comply with the provisions of the Mandatory Financial Responsibility Act, the law enforcement officer shall at the same time:

(1) issue to the driver cited a temporary operation sticker, valid for thirty days after the date the sticker is issued, and forward by mail or delivery to the department a duplicate of the issued sticker; and

(2) remove the license plate from the vehicle and send it with the duplicate of the sticker to the department or, if it cannot be removed, permanently deface the plate.

B. The department shall return or replace, in its discretion, a license plate removed under the provisions of Paragraph (2) of Subsection A of this section or replace a license plate defaced under that paragraph when the person cited for failure to comply with the provisions of the Mandatory Financial Responsibility Act furnishes proof of compliance to the department and pays to the division a reinstatement fee of twenty-five dollars ($25.00). If a person to whom the temporary operation sticker is issued furnishes to the department, within fifteen days after the issuance of the sticker, evidence of financial responsibility in compliance with the Mandatory Financial Responsibility Act and in effect on the date and at the time of the issuance of the sticker, the department shall replace or return the license plate and waive the twenty-five dollar ($25.00) reinstatement fee.

C. The secretary shall adopt and promulgate rules prescribing the form and use of the sticker required to be issued under Subsection A of this section.

D. The secretary shall adopt and promulgate rules requiring insurance carriers who terminate or cancel any motor vehicle insurance policy to report monthly each cancellation or termination to the department. Information pertaining to each motor vehicle shall be made a part of that vehicle file for one year.

E. Within ten days of notification by the insurance carrier of a termination or cancellation of a motor vehicle insurance policy, the department shall demand satisfactory evidence from the owner of the motor vehicle that he meets the requirements of the Mandatory Financial Responsibility Act. Failure to provide evidence of financial responsibility within twenty days after the department has mailed its demand for proof:

(1) constitutes reasonable grounds to believe that a person is operating a motor vehicle in violation of the provisions of Section 66-5-205 NMSA 1978; and

(2) requires the department to suspend the person's registration as provided in Section 66-5-236 NMSA 1978.

F. The department shall notify the superintendent of insurance if an insurance carrier fails to provide notification of cancellations or terminations as required by Subsection D of this section."

HOUSE BILL 406, AS AMENDED

CHAPTER 146

RELATING TO CHILD-CARE FACILITIES; REQUIRING A BACKGROUND CHECK ON INDIVIDUALS WHO WORK AT CHILD-CARE FACILITIES; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

Chapter 146 Section 1

Section 1. Section 32A-15-3 NMSA 1978 (being Laws 1985, Chapter 103, Section 3 and also Laws 1985, Chapter 140, Section 3) is amended to read:

"32A-15-3. CRIMINAL RECORDS CHECK--BACKGROUND CHECKS.--

A. Nationwide criminal record checks shall be conducted of all operators, staff and employees and prospective operators, staff and employees of child-care facilities, including every facility or program having primary custody of children for twenty hours or more per week, juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting the children's safety and welfare while receiving service through such facilities or program.

B. The department shall conduct a background check of all operators, staff and employees and prospective operators, staff and employees of child-care facilities by submitting a fingerprint card for those individuals to the department of public safety and the federal bureau of investigation."

Chapter 146 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 426

CHAPTER 147

RELATING TO MOTOR CARRIERS; REQUIRING MOTOR CARRIERS THAT TRANSPORT THE PUBLIC TO HAVE INSURANCE COVERAGE.

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

Chapter 147 Section 1

Section 1. Section 65-2-110 NMSA 1978 (being Laws 1981, Chapter 358, Section 31) is amended to read:

"65-2-110. FINANCIAL RESPONSIBILITY--TICKET RECLAIM BONDS--C.O.D. BONDS--PUBLIC LIABILITY AND PROPERTY DAMAGE--CARGO LIABILITY AND INTERCHANGE CHARGE LIABILITY BONDS OR INSURANCE POLICIES--SELF-INSURANCE--AMOUNTS--CONSIDERATIONS.--

A. Every motor carrier of persons holding a certificate issued by the commission shall, before interlining tickets, file with the commission a ticket reclaim bond in the amount of five hundred dollars ($500) assuring full and prompt payment to all other motor carriers holding the certificates of all money due them for transportation sold over their lines by the carrier filing the bond. Upon failure of any carrier to file the bond, he shall be cited to appear before the commission to show cause why his certificate should not be canceled for such failure. In cases where it is shown to the satisfaction of the commission that the amount of reclaim business among any motor carriers exceeds five hundred dollars ($500) during any one month, the commission shall increase the amount of the ticket reclaim bond to adequately cover such business.

B. Every carrier holding a certificate issued by the commission in compliance with the provisions of the laws of this state relating to the supervision and regulation of the business of the transportation of persons or property by motor vehicles for hire over the public highways of this state shall, before handling C.O.D. shipments, file with the commission a collect-on-delivery bond in the amount of five hundred dollars ($500) assuring full and prompt payment to any shipper entrusting a collect-on-delivery shipment of goods to the motor truck operator of all money due the shipper on the shipment or a return within ten days of the shipment to the shipper in the event that the shipment is refused by the consignee of the shipment or in the event that the consignee cannot be located. Upon failure of any motor carrier to file a collect-on-delivery bond, he shall be cited to appear before the commission to show cause why his certificate should not be canceled for such failure. Any shipper entrusting a collect-on-delivery shipment of goods to a motor carrier upon the return of the shipment with no delivery shall be liable to the motor carrier for the transportation charges upon the shipment, and in the event of the failure or refusal of the shipper to pay the charges, the motor carrier shall have a lien upon the shipment for the transportation charges due, which lien may be enforced under the terms and provisions of Sections 48-3-1 through 48-3-15 NMSA 1978 and relating to liens on personal property.

C. No motor carrier subject to the provisions of the Motor Carrier Act, including persons who provide services for which they charge at the time the service is rendered and who transport the public incidentally to that service regardless of whether that transportation is without charge, shall engage in any operations upon the highways of this state and no certificate or permit shall be issued to a motor carrier or shall remain in force unless and until there has been filed with and approved by the commission a certificate showing the issuance of a policy of insurance in a form approved by the commission or a surety bond or policy of insurance issued by some company authorized to do surety or insurance business in this state, conditioned to pay, within the amount of the certificate showing the issuance of a policy of insurance in a form approved by the commission or surety bond or policy of insurance, all losses and damage proximately caused by or resulting from the negligent operation, maintenance or use of the motor carrier's vehicles or for loss or damage to property of others; nor shall any motor carrier subject to the provisions of the Motor Carrier Act engage in any operations upon the highways of this state, nor shall any certificate or permit be issued to any motor carrier, nor remain in force unless and until there has been filed with and approved by the commission a certificate showing the issuance of a policy of insurance in a form approved by the commission or a surety bond or policy of insurance issued by some company authorized to do surety or insurance business in this state conditioned upon the carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of the motor carrier in connection with its transportation service.

D. The minimum amounts of a certificate showing the issuance of a policy of insurance in a form approved by the commission or surety bond or policy of insurance referred to by this section shall be prescribed by the commission by rule. In prescribing these amounts, the commission shall take into consideration:

(1) the creation of sufficient incentives to carriers to maintain and operate their equipment in a safe manner;

(2) the requirements of the Motor Carrier Act with regard to entry into the transportation business and rate flexibility;

(3) the size and operating characteristics of carriers;

(4) vehicle weight; and

(5) all other factors necessary to assure that carriers maintain an appropriate level of financial responsibility.

E. The commission may, upon application made to the commission and upon terms and conditions to be prescribed by the commission, permit any motor carrier to carry its own insurance in lieu of filing a certificate showing the issuance of a policy of insurance in a form approved by the commission or a surety bond or a policy of insurance. In granting an application under this subsection, the commission shall take into account:

(1) the financial stability of the carrier;

(2) previous loss history of the carrier;

(3) the safety record of the carrier;

(4) the size, nature of operations and other operating characteristics of the carrier; and

(5) all other factors necessary for the protection of passengers, shippers and the public."

HOUSE BILL 777, AS AMENDED

CHAPTER 148

RELATING TO POST-SECONDARY EDUCATIONAL INSTITUTIONS; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE EXCEPTIONS TO EMPLOYEE INTERESTS IN CONTRACTS.

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

Chapter 148 Section 1

Section 1. Section 21-1-17 NMSA 1978 (being Laws 1889, Chapter 138, Section 68, as amended) is amended to read:

"21-1-17. INTEREST IN CONTRACTS BY BOARD MEMBERS OR EMPLOYEES PROHIBITED.--No employee or member of a board of regents of any state educational institution shall have any direct or indirect financial interest in any contract for building or improving any of that state educational institution or for the furnishing of supplies or services to that institution except as permitted pursuant to the University Research Park Act or unless it complies with provisions of the Governmental Conduct Act and the Procurement Code."

Chapter 148 Section 2

Section 2. Section 21-1-35 NMSA 1978 (being Laws 1923, Chapter 148, Section 1415, as amended) is amended to read:

"21-1-35. SALES BY BOARDS, OFFICERS OR EMPLOYEES PROHIBITED--PARTIES TO CONTRACTS RECEIVING COMMISSION OR PROFIT--PENALTY.--No board of regents of a state educational institution, no member of a board and no school official or teacher, either directly or indirectly, shall sell to any state educational institution that he is connected with by reason of being a member of a board of regents of a state educational institution or to any school official or teacher, any school books, school furniture, equipment, apparatus or any other kind of school supplies, sell property

insurance or life insurance to any employee of that state educational institution or do any work under contract, nor shall any such board or members thereof or school officers or teachers receive any commission or profit on account thereof, and all such persons are prohibited from being parties directly or indirectly to any such contract or transaction; provided that the provisions of this section shall not apply to contracts entered into pursuant to the provisions of the University Research Park Act or that comply with provisions of the Governmental Conduct Act and the Procurement Code. Any person violating the provisions of this section shall be fined not exceeding one thousand dollars ($1,000) or imprisoned not exceeding one year in the penitentiary of New Mexico or be fined and imprisoned as set forth in this section in the discretion of the court."

HOUSE BILL 446, AS AMENDED

CHAPTER 149

RELATING TO CRIMINAL PROCEDURE; AMENDING PROVISIONS REGARDING INVOLUNTARY COMMITMENT OF INCOMPETENT DEFENDANTS.

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

Chapter 149 Section 1

Section 1. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3, as amended by Laws 1993, Chapter 240, Section 3 and also by Laws 1993, Chapter 249, Section 3) is amended to read:

"31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--REPORT.--

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code and order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

B. When a district court determines that a defendant charged with a felony is incompetent to proceed in the criminal case, but does not dismiss the criminal case, and the district court at that time makes a specific finding that the defendant is dangerous, the district court may commit the defendant as provided in this section for treatment to attain competency to proceed in a criminal case. The court shall enter an appropriate transport order that also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed shall be provided with treatment available to involuntarily committed persons, and:

(1) the defendant shall be detained by the department of health in a secure, locked facility; and

(2) the defendant, during the period of commitment, shall not be released from that secure facility except pursuant to an order of the district court that committed him.

C. Within thirty days of receipt of the court's order of commitment of an incompetent defendant and of the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or his designee, the defendant shall be admitted to a facility designated for the treatment of defendants who are incompetent to stand trial and dangerous. If, after conducting an investigation, the secretary determines that the department of health does not have the ability to meet the medical needs of a defendant ordered committed to a facility, the secretary or his designee may refuse admission to the defendant upon written certification to the committing court and the parties of the lack of ability to meet the medical needs of the defendant. The certification must be made within fourteen days of the receipt of the court's order of commitment and necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary or his designee. Within ten days of filing of the certification the court shall conduct a hearing for further disposition of the criminal case.

D. As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.

E. Within thirty days of an incompetent defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment shall file with the district court, the state and the defense an initial assessment and treatment plan and a report on the defendant's amenability to treatment to render him competent to proceed in a criminal case, an assessment of the facility's or program's capacity to provide appropriate treatment for the defendant and an opinion as to the probability of the defendant's attaining competency within a period of nine months from the date of the original finding of incompetency to proceed in a criminal case."

Chapter 149 Section 2

Section 2. Section 31-9-1.3 NMSA 1978 (being Laws 1988, Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4, as amended by Laws 1993, Chapter 240, Section 4 and also by Laws 1993, Chapter 249, Section 4) is amended to read:

"31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY REVIEW--REPORTS--CONTINUING TREATMENT.--

A. Within ninety days of the entry of the order committing an incompetent defendant to undergo treatment, the district court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) whether the defendant is competent to proceed in the criminal case; and, if not,

(2) whether the defendant is making progress under treatment toward attainment of competency within nine months from the date of the original finding of incompetency; and

(3) whether the defendant remains dangerous as that term is defined in Section 31-9-1.2 NMSA 1978.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written progress report to the court, the state and the defense indicating:

(1) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

(2) the opinion of the treatment supervisor as to whether the defendant has attained competency or as to whether the defendant is making progress under treatment toward attaining competency within nine months from the date of the original finding of incompetency and whether there is a substantial probability that the defendant will attain competency within nine months from the date of the original finding of incompetency;

(3) whether the defendant is dangerous as that term is defined in Section 31-9-1.2 NMSA 1978 or whether the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code; and

(4) if the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor.

C. If the district court finds the defendant to be competent, the district court shall set the matter for trial, provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

D. If the district court finds that the defendant is still not competent to proceed in a criminal case but that he is making progress toward attaining competency, the district court may continue or modify its original treatment order entered pursuant to Section 31-9-1.2 NMSA 1978, provided that:

(1) the question of the defendant's competency shall be reviewed again not later than nine months from the original determination of incompetency to proceed in a criminal case; and

(2) the treatment supervisor shall submit a written progress report as specified in Subsection B of this section at least seven days prior to such hearing.

E. If the district court finds that the defendant is still not competent, that he is not making progress toward attaining competency and that there is not a substantial probability that he will attain competency within nine months from the date of the original finding of incompetency, the district court shall proceed pursuant to Section 3l-9-1.4 NMSA 1978. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the proceedings."

Chapter 149 Section 3

Section 3. Section 31-9-1.4 NMSA 1978 (being Laws 1988, Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5, as amended by Laws 1993, Chapter 240, Section 5, and also by Laws 1993, Chapter 249, Section 5) is amended to read:

"31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT DEFENDANTS.--If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, the district court may:

A. hear the matter pursuant to Section 31-9-1.5 NMSA 1978 within three months if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

B. release the defendant from custody and dismiss with prejudice the charges against him; or

C. dismiss the criminal case without prejudice in the interest of justice. If the treatment supervisor has issued a report finding that the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code, the department of health shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to the Mental Health and Developmental Disabilities Code. The district court may refer the defendant

to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code."

Chapter 149 Section 4

Section 4. Section 31-9-1.5 NMSA 1978 (being Laws 1988, Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6, as amended by Laws 1993, Chapter 240, Section 6 and also by Laws 1993, Chapter 249, Section 6) is amended to read:

"31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY HEARING.--

A. As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of the evidence shall be held if the case is not dismissed and if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978. Such hearing shall be conducted by the district court without a jury. The state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978, the district court shall dismiss the criminal case with prejudice; however, nothing in this section shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

C. If the district court finds by clear and convincing evidence that the defendant committed a crime and has not made a finding of dangerousness, pursuant to Section 31-9-1.2 NMSA 1978, the district court shall dismiss the charges without prejudice. The state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

D. If the district court finds by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a

felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978 and enters a finding that the defendant remains incompetent to proceed and remains dangerous pursuant to Section 31-9-1.2 NMSA 1978:

(1) the defendant shall be detained by the department of health in a secure, locked facility;

(2) the defendant shall not be released from that secure facility except pursuant to an order of the district court which committed him or upon expiration of the period of time equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding;

(3) significant changes in the defendant's condition, including but not limited to trial competency and dangerousness, shall be reported in writing to the district court, state and defense; and

(4) at least every two years, the district court shall conduct a hearing upon notice to the parties and the department of health charged with detaining the defendant. At the hearing, the court shall enter findings on the issues of trial competency and dangerousness:

(a) upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding;

(b) if the defendant continues to be incompetent to proceed in a criminal case and dangerous pursuant to Section 31-9-1.2 NMSA 1978, the court shall review the defendant's competency and dangerousness every two years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding; provided, that if the treatment supervisor recommends that the defendant be committed pursuant to the Mental Health and Developmental Disabilities Code, the court may at any time proceed pursuant to Subsection C of Section 31-9-1.4, NMSA 1978; and

(c) if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or if the court finds upon its two-year review hearing that the defendant is no longer dangerous, as defined in Section 31-9-1.2 NMSA 1978, the defendant shall be released."

Chapter 149 Section 5

Section 5. Section 31-9-1.6 NMSA 1978 (being Laws 1997, Chapter 153, Section 1) is amended to read:

"31-9-1.6. HEARING TO DETERMINE MENTAL RETARDATION.--

A. Upon motion of the defense requesting a ruling, the court shall hold a hearing to determine whether the defendant has mental retardation as defined in Subsection E of this section.

B. If the court finds by a preponderance of the evidence that the defendant has mental retardation and that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, then no later than sixty days from notification to the secretary of health or his designee of the court's findings the department of health shall perform an evaluation to determine whether the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others.

C. If the department of health evaluation results in a finding that the defendant presents a likelihood of serious harm to himself or a likelihood of serious harm to others, within sixty days of the department's evaluation the department shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1 NMSA 1978 or upon expiration of fourteen months from the court's initial determination that the defendant is incompetent to proceed in a criminal case.

E. As used in this section, "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of mental retardation."

Chapter 149 Section 6

Section 6. Section 43-1-1 NMSA 1978 (being Laws 1976, Chapter 43, Section 1, as amended by Laws 1993, Chapter 240, Section 7 and also by Laws 1993, Chapter 249, Section 7) is amended to read:

"43-1-1. MENTAL CONDITION OF CRIMINAL DEFENDANTS--EVALUATION--TREATMENT.--

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in

making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state shall visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, the secretary of health shall call upon the county sheriff of the county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant charged with a felony pursuant to Section 31-9-1.2 NMSA 1978 or may dismiss the charges without prejudice and refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code. A defendant so committed under the Mental Health

and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. Whenever the secretary of health determines that he does not have the ability to meet the medical needs of a defendant committed pursuant to Sections 31-9-1.2 through 31-9-1.5 NMSA 1978, the secretary or his designee shall serve upon the district court and the parties a written certification of the lack of ability to meet the medical needs of the defendant. The court shall set a hearing upon the certification within ten days of its filing and shall, after the hearing, make a determination regarding disposition of the criminal case. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to Section 31-9-1.2 NMSA 1978 may be returned by the county sheriff to the custody of the court upon not less than three days' notice. The secretary shall provide written notification to the court and parties within three days of the defendant's discharge.

F. All acts to be performed by the secretary of health pursuant to provisions of this section may be performed by the secretary's designee."

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 469, AS AMENDED

CHAPTER 150

RELATING TO CRIMINAL LAW; CLARIFYING THE ELEMENTS OF THE OFFENSE OF FAILURE TO APPEAR; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 150 Section 1

Section 1. Section 31-3-9 NMSA 1978 (being Laws 1973, Chapter 73, Section 6) is amended to read:

"31-3-9. FAILURE TO APPEAR--PENALTY.--A person released pending any proceeding related to the prosecution or appeal of a criminal offense or a probation revocation proceeding who willfully fails to appear before any court or judicial officer as required:

A. is guilty of a fourth degree felony, if he was released in connection with a felony proceeding; or

B. is guilty of a petty misdemeanor, if he was released in connection with a misdemeanor or a petty misdemeanor proceeding."

Chapter 150 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 481

CHAPTER 151

RELATING TO PUBLIC ASSISTANCE; REMOVING THE CHILD SUPPORT TRUST FUNDS FROM THE NEW MEXICO WORKS ACT.

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

Chapter 151 Section 1

Section 1. REPEAL.--Section 27-2B-20 NMSA 1978 (being Laws 1998, Chapter 8, Section 20 and also Laws 1998, Chapter 9, Section 20) is repealed.

HOUSE BILL 840

CHAPTER 152

RELATING TO WATER; CORRECTING THE PROVISIONS FOR IRRIGATION AND FLOOD CONTROL FACILITIES IN THE WATER QUALITY CONTROL ACT.

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

Chapter 152 Section 1

Section 1. Section 74-6-12 NMSA 1978 (being Laws 1967, Chapter 190, Section 11, as amended) is amended to read:

"74-6-12. LIMITATIONS.--

A. The Water Quality Act does not grant to the commission or to any other entity the power to take away or modify the property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

B. The Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, the Ground Water Protection Act or the Solid Waste Act except to abate water pollution or to control the disposal or use of septage and sludge.

C. The Water Quality Act does not authorize the commission to adopt any regulation with respect to any condition or quality of water if the water pollution and its effects are

confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of water quality.

E. The Water Quality Act does not supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

F. Except as required by federal law, in the adoption of regulations and water quality standards and in an action for enforcement of the Water Quality Act and regulations adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. Such degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. The Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act, Section 70-2-12 NMSA 1978 and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

H. When changes in dissolved oxygen, temperature, dissolved solids, sediment or turbidity in a water of the state is attributable to natural causes or to the reasonable operation of irrigation and flood control facilities that are not subject to federal or state water pollution control permitting, numerical standards for temperature, dissolved solids content, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply. "Reasonable operation", as used in this subsection, shall be defined by regulation of the commission."

HOUSE BILL 592, AS AMENDED

CHAPTER 153

RELATING TO BOARDS; PROHIBITING, RESTRICTING AND REQUIRING REPORTING OF CERTAIN GIFTS TO MEMBERS OF THE RETIREMENT BOARD; DECLARING AN EMERGENCY.

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

Chapter 153 Section 1

Section 1. A new section of the Public Employees Retirement Act is enacted to read:

"RESTRICTIONS ON RECEIPT OF GIFTS--RESTRICTION ON CAMPAIGN CONTRIBUTIONS--REQUIRED REPORTING.--

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

(1) has a current contract with the retirement board or association;

(2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;

(3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

(4) is an organization, association or other entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection.

B. No person who is a candidate in a primary or general election for a position that qualifies the person for ex-officio membership on the retirement board, no member serving ex officio on the retirement board and no person who is a nominee for retirement board membership by election by some or all of the members of the association pursuant to the Public Employees Retirement Act shall accept anything of a value of more than twenty-five dollars ($25.00) as a contribution to an ex-officio member's statewide campaign in a primary or general election or as a contribution to the campaign of a nominee for membership on the board as a member elected by all or some of the members of the association from a person who:

(1) has a current contract with the retirement board or association;

(2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;

(3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

(4) is an organization, association or other entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection.

C. Within ten days after an election in which one or more board members are elected by some or all of the members of the association pursuant to the Public Employees Retirement Act, all persons who were candidates for board membership in that election shall file with the association a report disclosing all contributions to their respective campaigns whether made directly to the candidate, a political action committee or to some other entity supporting the candidate's election. The contributions shall be

reported by amount and specific source. Within sixty days after the election, the association shall publish the reports required by this subsection."

Chapter 153 Section 2

Section 2. A new section of the Educational Retirement Act is enacted to read:

"RESTRICTIONS ON RECEIPT OF GIFTS--RESTRICTION ON CAMPAIGN CONTRIBUTIONS--REQUIRED REPORTING.--

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

(1) has a current contract with the retirement board or association;

(2) is a potential bidder, offeror or contractor for the provision of services or personal property to the retirement board or association;

(3) is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

(4) is an organization, association or other entity having a membership that includes persons described in Paragraphs (1) through (3) of this subsection."

Chapter 153 Section 2

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

HOUSE BILL 645, AS AMENDED

SIGNED April 5, 1999

CHAPTER 154

RELATING TO UNEMPLOYMENT COMPENSATION; REQUIRING AS A CONDITION OF ELIGIBILITY THAT TEMPORARY EMPLOYEES CONTACT A TEMPORARY SERVICES EMPLOYER FOR A NEW ASSIGNMENT.

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

Chapter 154 Section 1

Section 1. Section 51-1-52.1 NMSA 1978 (being Laws 1987, Chapter 350, Section 1) is amended to read:

"51-1-52.1. LEASING EMPLOYER--TEMPORARY SERVICES EMPLOYER.--

A. As used in this section:

(1) "leasing employer" means an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs the following functions:

(a) retains the right to hire and terminate workers; and

(b) pays the worker from its own account; and

(2) "temporary services employer" means an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs all of the following functions:

(a) negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality and price of the services;

(b) determines assignments of workers, even though workers retain the right to refuse specific assignments;

(c) retains the authority to reassign or refuse to reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer;

(d) assigns the worker to perform services for a client or customer;

(e) sets the rate of pay for the worker, whether or not through negotiation; and

(f) pays the worker directly.

B. Notwithstanding any other provision of the Unemployment Compensation Law, if an individual or entity contracts to supply an employee to perform services for a client or customer and is a leasing employer or a temporary services employer, the individual or entity is the employer of the employee who performs the services. If an individual or entity contracts to supply an employee to perform services for a client or customer and is not a leasing employer or temporary services employer, the client or customer is the employer of the employee who performs the services. An individual or entity that contracts to supply an employee to perform services for a customer or client and pays wages to the employee for the services, but is not a leasing employer or a temporary services employer, pays the wages as the agent of the employer.

C. Notwithstanding any other provision of the Unemployment Compensation Law, in circumstances which are in essence the loan of an employee from one employer to another employer wherein direction and control of the manner and means of performing the services transfers to the employer to whom the employee is loaned, the loaning employer shall continue to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer shall be considered the employer for the purpose of any remuneration paid to the employee, regardless of whether the loaning employer also pays remuneration to the employee.

D. A temporary services employer shall provide an employee, at the time of hiring, with written notice that the employee is required to contact the temporary services employer for reassignment upon the completion of an assignment and that failure to do so may result in denial of unemployment benefits.

E. If an employee of a temporary services employer has received the written notice pursuant to Subsection D of this section and fails without good cause to contact the temporary services employer upon completion of an assignment, the employee shall be deemed to have voluntarily left employment without good cause in connection with his employment for purposes of Section 51-1-7 NMSA 1978."

HOUSE BILL 695, AS AMENDED

CHAPTER 155

RELATING TO DEVELOPMENT TRAINING; PERMITTING LIMITED WAIVERS OF CERTAIN TRAINEE REQUIREMENTS; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 155 Section 1

Section 1. Section 21-19-7 NMSA 1978 (being Laws 1983, Chapter 299, Section 1, as amended) is amended to read:

"21-19-7. DEVELOPMENT TRAINING.--

A. The economic development department shall establish a development training program that provides quick-response classroom and in-plant training to furnish qualified manpower resources for new or expanding industries and non-retail service sector businesses in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom-designed for the particular company and shall be based on the special requirements of each company. The program shall be operated on a statewide basis and shall be designed to assist any area in becoming more competitive economically.

B. There is created the "industrial training board" composed of:

(1) the director of the economic development division of the economic development department;

(2) the director of the vocational education division of the state department of public education;

(3) the director of the job training division of the labor department;

(4) the executive director of the commission on higher education;

(5) one member from organized labor appointed by the governor; and

(6) one public member from the business community appointed by the governor.

C. The industrial training board shall establish policies and promulgate rules and regulations for the administration of appropriated funds and shall provide review and oversight to assure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits preserving the ecological state of New Mexico and its people.

D. Subject to the approval of the industrial training board, the economic development division of the economic development department shall:

(1) administer all funds allocated or appropriated for industrial development training purposes;

(2) provide designated training services;

(3) regulate, control and abandon any training program established under the provisions of this section;

(4) assist companies requesting training in the development of a training proposal to meet the companies' manpower needs;

(5) contract for the implementation of all training programs;

(6) provide for training by educational institutions or by the company through in-plant training, at the company's request; and

(7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The vocational education division of the state department of public education shall provide technical assistance to the economic development department concerning the development of agreements, the determination of the most appropriate instructional training to provide and the review of training program implementation.

F. The state shall contract with a company or an educational institution to provide training or instructional services in accordance with the approved training proposal and within the following limitations:

(1) no payment shall be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;

(2) training applicants shall have resided within the state for a minimum of one year immediately prior to the commencement of the training program and be of legal status for employment; provided, however, that prior to July 1, 2004 the residency requirements may be waived in part for projects within New Mexico communities located within fifty miles of the state border if the project meets the following criteria:

(a) the project will employ more than one thousand five hundred employees;

(b) the resident labor force within a fifty mile radius of the project location is not sufficient to fill the full-time-equivalent position requirements of the project as determined by the labor department;

(c) preference for training shall be given to New Mexico residents; and

(d) no less than fifty percent of the project's work force shall be residents of New Mexico;

(3) payment for institutional classroom training shall be made under any accepted training contract for a qualified training program;

(4) no payment shall be made under any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;

(5) all applicants shall be eligible under the federal Fair Labor Standards Act and shall not have terminated a public school program within the past three months except by graduation;

(6) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(7) persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational programs; and

(8) no payment shall be made for training programs or production of Indian jewelry or imitation Indian jewelry unless a majority of those involved in the training program or production are of Indian descent."

HOUSE BILL 720

CHAPTER 156

RELATING TO FIREARMS; AUTHORIZING THE TEMPORARY DISPLAY OF AN INOPERATIVE FIREARM IN A LICENSED LIQUOR ESTABLISHMENT; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 156 Section 1

Section 1. Section 30-7-3 NMSA 1978 (being Laws 1975, Chapter 149, Section 1, as amended) is amended to read:

"30-7-3. UNLAWFUL CARRYING OF A FIREARM IN LICENSED LIQUOR ESTABLISHMENTS.--

A. Unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages consists of carrying a loaded or unloaded firearm on any premises licensed by the regulation and licensing department for the dispensing of alcoholic beverages except:

(1) by a law enforcement officer in the lawful discharge of his duties;

(2) by the owner, lessee, tenant or operator of the licensed premises or his agents, including privately employed security personnel during the performance of their duties;

(3) by a person in that area of the licensed premises usually and primarily rented on a daily or short-term basis for sleeping or residential occupancy, including hotel or motel rooms;

(4) by a person on that area of a licensed premises primarily utilized for vehicular traffic or parking; or

(5) for the purpose of temporary display, provided that the firearm is:

(a) made completely inoperative before it is carried onto the licensed premises and remains inoperative while it is on the licensed premises; and

(b) under the control of the licensee or an agent of the licensee while the firearm is on the licensed premises.

B. Whoever commits unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages is guilty of a fourth degree felony."

Chapter 156 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 729

CHAPTER 157

RELATING TO OPEN MEETINGS; EXCLUDING DISCUSSIONS OF TRADE SECRETS OF CERTAIN PUBLIC HOSPITALS FROM THE APPLICATION OF THE OPEN MEETINGS ACT; AMENDING THE NMSA 1978.

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

Chapter 157 Section 1

Section 1. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open

pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars ($2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act.

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section, the closure:

(1) if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the policymaking body is not in an open meeting, shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes."

HOUSE BILL 741

CHAPTER 158

RELATING TO PUBLIC RECORDS; AMENDING A SECTION OF THE NMSA 1978 TO ADD EXCEPTIONS TO THE INSPECTION OF PUBLIC RECORDS ACT; DECLARING AN EMERGENCY.

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

Chapter 158 Section 1

Section 1. Section 14-2-1 NMSA 1978 (being Laws 1947, Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.-- A. Every person has a right to inspect any public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memorandums which 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 any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

(5) as provided by the Confidential Materials Act;

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education; and

(8) as otherwise provided by law.

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of county-wide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in Subsections B through D of this section prohibits a governing body from identifying or otherwise disclosing the information described in this section."

Chapter 158 Section 2

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

HOUSE BILL 742, AS AMENDED

SIGNED April 5, 1999

CHAPTER 159

RELATING TO PUBLIC HEALTH; ESTABLISHING ISOLATION PROCEDURES FOR PATIENTS WITH COMMUNICABLE DISEASES; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 159 Section 1

Section 1. Section 24-1-15 NMSA 1978 (being Laws 1973, Chapter 359, Section 15) is amended to read:

"24-1-15. REPORTING OF CONTAGIOUS DISEASES.--

A. Whenever any physician or other person knows that any person is sick with any disease dangerous to the public health, he shall promptly notify a public health official or his authorized agent.

B. A public health official who has knowledge that a person is currently infected with a threatening communicable disease and has refused voluntary treatment, detention or observation shall petition the court for an order to detain and treat the person who is infected with the threatening communicable disease until the person is no longer a contagious threat to the public or the person voluntarily complies with the appropriate treatment and contagion precautions.

C. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing that the person is infected with a threatening communicable disease.

D. The petition shall state that the person to be detained:

(1) is actively infectious with a threatening communicable disease or presents a substantial likelihood of having a threatening communicable disease based on credible medical evidence;

(2) poses a substantial likelihood of transmission of the threatening communicable disease to others because of inadequate separation from others; and

(3) after being advised of his condition and the risks posed thereby, has refused voluntary treatment.

E. Upon the filing of a petition the court shall:

(1) immediately grant ex parte a temporary order of protection to isolate and begin treating the person infected with the threatening communicable disease if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that the person infected with a threatening communicable disease poses a substantial threat to the public health and safety;

(2) cause the temporary order of protection, notice of hearing and an advisement of the terms of the temporary protective order, including his right to representation and re-petition for termination of any protective order that removes, detains and treats the infected person, to be immediately served on the allegedly infected person; and

(3) within five days after the granting of the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order.

F. A person held pursuant to a temporary protective order as set forth in Subsection E of this section shall be:

(1) entitled to representation by counsel at the evidentiary hearing and at all hearings thereafter for the duration of the period of removal, detention and treatment; and

(2) permitted to communicate on any matter, including his removal, detention and treatment, with persons by telephone, or other reasonably available means, that do not expose other persons to the risk of infection for the duration of the period of removal, detention and treatment.

G. At the evidentiary hearing the court shall review the circumstances surrounding the temporary order and order a subsequent hearing within ninety days of the temporary order's issuance and every ninety days thereafter until:

(1) the person being held and treated completes his treatment and is certified by a public health official to pose no further risk of infecting others;

(2) the person being held and treated can show, by clear and convincing evidence, that he can and will comply with appropriate treatment and contagion precautions voluntarily; or

(3) exceptional circumstances exist warranting the termination of the temporary protective order.

H. The provisions of this section do not permit the forcible administration of any other medications not reasonably required for the treatment of the threatening communicable disease without a prior court order.

I. For purposes of this section:

(1) "court" means the district court of the judicial district where the person who is alleged to be infected with a threatening communicable disease resides or is found;

(2) "public health official" means a district health officer, the director of the public health division of the department of health, a chief medical officer or a person designated by the secretary of health to carry out the duties provided in this section; and

(3) "threatening communicable disease" means a deadly disease that causes death or great bodily harm, passes from one person to another and for which there is no means by which the public reasonably can avoid the risk of contracting the disease."

HOUSE BILL 757

CHAPTER 160

RELATING TO SMALL BREWERS; PERMITTING COMMON FACILITIES FOR SALE OF PRODUCTS OF MULTIPLE SMALL BREWERS; AMENDING A SECTION OF THE LIQUOR CONTROL ACT.

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

Chapter 160 Section 1

Section 1. Section 60-6A-26.1 NMSA 1978 (being Laws 1985, Chapter 217, Section 5, as amended) is amended to read:

"60-6A-26.1. SMALL BREWER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to:

(1) become a manufacturer or producer of beer;

(2) package, label and export beer, whether manufactured, bottled or produced by him or any other person;

(3) sell only beer that is packaged by or for him to a person holding a wholesaler's license or a small brewer's license;

(4) deal in warehouse receipts for beer;

(5) conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, the licensee on the small brewer's premises;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act;

(7) at public celebrations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's public celebration permit, conduct tastings and sell by the glass or in unbroken packages, but not for resale, beer produced and bottled by or for the small brewer;

(8) at no more than two other locations off the small brewer's premises, after the small brewer has paid the applicable fee for a small brewer's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department regulations for new liquor license locations and after the director has issued a small brewer's off-premises permit for each off-premises location, conduct beer tastings and sell by the glass or in unbroken packages for consumption off the small brewer's off-premises location, but not for resale, beer produced and bottled by or for the small brewer;

(9) allow members of the public, on the licensed premises and under the direct supervision of the licensee, to manufacture beer for personal consumption and not for resale using the licensee's equipment and ingredients; and

(10) apply to the department for a permit to join with other licensed small brewers to sell beer produced by or for small brewers at a common facility at which there may be products of two or more licensed small brewers offered for tasting or sale by the glass or in unbroken packages for consumption off premises but not for resale.

C. Sales and tastings of beer authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas and voting-day sales found in Section 60-7A-1 NMSA 1978 and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday."

Chapter 160 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 785, AS AMENDED

CHAPTER 161

RELATING TO LICENSURE; CHANGING PROVISIONS OF THE COUNSELING AND THERAPY PRACTICE ACT; ELIMINATING EXEMPTIONS FROM THE ACT; ELIMINATING CERTAIN GRANDFATHERING PROVISIONS; CHANGING TITLES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 161 Section 1

Section 1. Section 61-9A-1 NMSA 1978 (being Laws 1993, Chapter 49, Section 1) is amended to read:

"61-9A-1. SHORT TITLE.--Chapter 61, Article 9A NMSA 1978 may be cited as the "Counseling and Therapy Practice Act"."

Chapter 161 Section 2

Section 2. Section 61-9A-3 NMSA 1978 (being Laws 1993, Chapter 49, Section 3, as amended) is amended to read:

"61-9A-3. DEFINITIONS.--As used in the Counseling and Therapy Practice Act:

A. "accredited institution" means a university or college accredited by a regional accrediting agency of institutions of higher education;

B. "alcohol abuse counselor" means a person who engages in the practice of alcohol abuse counseling;

C. "alcohol and drug abuse counselor" means a person who engages in the practice of alcohol and drug abuse counseling;

D. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics and current emotional or mental state by appropriately educated, trained and experienced clinicians and the use of nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to or changing life situations of a physical, mental or emotional nature;

E. "appropriate supervision" means supervision by a professional clinical mental health counselor, professional mental health counselor, marriage and family therapist,

professional art therapist, psychiatrist, psychologist, alcohol and drug abuse counselor or independent social worker;

F. "board" means the counseling and therapy practice board;

G. "client contact hours" means the time spent with a client to appraise, diagnose and treat psychopathology;

H. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, group dynamics and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of assessing and treating psychopathology and promoting optimal mental health;

I. "consulting" means the application of scientific principles and procedures in psychotherapeutic counseling, guidance and human development to provide assistance in understanding and solving a problem that the consultee may have in relation to a third party;

J. "counseling" means the application of scientific principles and procedures in therapeutic counseling, guidance and human development to provide assistance in understanding and solving a mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment problem that a client may have;

K. "counseling and therapy practice" means the licensed or registered practice of professional art therapy, professional clinical mental health counseling, professional mental health counseling, independent mental health counseling, marriage and family therapy, alcohol abuse counseling, drug abuse counseling and alcohol and drug abuse counseling;

L. "counselor and therapist practitioners" means professional art therapists, professional clinical mental health counselors, professional mental health counselors, marriage and family therapists, registered mental health counselors, registered independent mental health counselors, alcohol abuse counselors, drug abuse counselors and alcohol and drug abuse counselors as a group;

M. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

N. "direct observation" means under supervision by an appropriate supervisor with the supervisee in one or more of the following settings: face-to-face, co-facilitation, one way mirrors or direct audio-visual;

O. "drug abuse counselor" means a person who engages in the practice of drug abuse counseling;

P. "marriage and family therapy" means the assessment, diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems;

Q. "marriage and family therapist" means a person who is licensed for independent practice of marriage and family therapy;

R. "mental disorder" means any of several conditions or disorders that meet the diagnostic criteria contained in the diagnostic and statistical manual of the American psychiatric association or the world health organization's international classification of diseases manual;

S. "practice of alcohol or drug abuse counseling" means the licensed practice of counseling services, as defined by regulation of the board, to individuals, couples, families or groups. The services may include screening, assessment, consultation, development of treatment plans, case management, counseling, referral, appraisal, crisis intervention, education, reporting and recordkeeping;

T. "practice of art therapy" means the licensed practice of counseling services to individuals, families or groups of services that use art media as a means of expression and communication to promote perceptive, intuitive, affective and expressive experiences that alleviate distress, reduce physical, emotional, behavioral and social impairment and lead to growth or reintegration of one's personality. Art therapy services include diagnostic evaluation, development of patient treatment plans, goals and objectives, case management services and therapeutic treatment as defined by regulation of the board;

U. "practice of marriage and family therapy" means the licensed practice of marriage and family therapy services to individuals, family groups and marital couples, singly or in groups. The "practice of marriage and family therapy" involves the professional application of psychotherapeutic and family systems theories and techniques, as defined by regulation of the board, in the delivery of services to individuals, couples and families and involves the presence of a diagnosed mental or physical disorder in at least one member of the couple or family being treated;

V. "practice of professional clinical mental health counseling" means the licensed practice of mental health clinical counseling to individuals, couples, families or groups and the diagnosis and treatment of mental and emotional disorders as defined by the American psychiatric association or the world health organization. "Practice of professional clinical mental health counseling" includes development of patient treatment plans, goals and objectives, case management services, therapeutic treatment, research and clinical mental health appraisal, consulting, counseling and referral as defined by regulation of the board;

W. "practice of professional mental health counseling" means the licensed practice of a therapeutic counseling service that integrates a wellness and multicultural model of

human behavior involving certain methods and techniques of appraisal, including consulting, counseling and referral as defined by regulation of the board;

X. "practice of registered mental health counseling" means the registered practice, under appropriate supervision, of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including consulting, counseling and referral as defined by regulation of the board;

Y. "practice of registered independent mental health counseling" means the registered independent practice of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including consulting, counseling and referral as defined by regulation of the board;

Z. "professional art therapist" means a licensed person who engages in the practice of art therapy;

AA. "professional clinical mental health counselor" means a licensed person who engages in the independent practice of professional clinical mental health counseling without supervision;

BB. "professional mental health counselor" means a licensed person who engages in the practice of professional mental health counseling without supervision;

CC. "referral" means the evaluation of information to identify needs of the person being counseled to determine the advisability of sending the person being counseled to other specialists, informing the person being counseled of such judgment and communicating the information to other counseling services as deemed appropriate;

DD. "licensed mental health counselor" means a person who is licensed by the board and is authorized by the board to engage in the practice of mental health counseling under appropriate supervision;

EE. "registered independent mental health counselor" means an individual who is registered with the board and is authorized by the board to engage in the practice of mental health counseling without supervision;

FF. "substance abuse counselor" means a person who is licensed to practice alcohol and drug abuse counseling, alcohol abuse counseling or drug abuse counseling; and

GG. "substance abuse intern" means a person who is licensed to practice alcohol and drug abuse counseling, alcohol abuse counseling or drug abuse counseling under direct observation."

Chapter 161 Section 3

Section 3. Section 61-9A-4 NMSA 1978 (being Laws 1993, Chapter 49, Section 4, as amended) is amended to read:

"61-9A-4. LICENSE OR REGISTRATION REQUIRED.--

A. Unless licensed or registered to practice under the Counseling and Therapy Practice Act, no person shall engage in the practice of:

(1) professional mental health counseling;

(2) professional clinical mental health counseling;

(3) marriage and family therapy;

(4) professional art therapy;

(5) counseling as a licensed mental health counselor; or

(6) counseling as a registered independent mental health counselor.

B. Unless licensed to practice under the Counseling and Therapy Practice Act, no person shall engage in the practice of:

(1) alcohol and drug abuse counseling;

(2) alcohol abuse counseling;

(3) drug abuse counseling; or

(4) substance abuse counseling as a substance abuse intern."

Chapter 161 Section 4

Section 4. Section 61-9A-5 NMSA 1978 (being Laws 1993, Chapter 49, Section 5, as amended) is amended to read:

"61-9A-5. SCOPE OF PRACTICE.--

A. For the purpose of the Counseling and Therapy Practice Act, a person is practicing as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse intern if he advertises; offers himself to practice; is employed in a position described as professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, registered mental health

counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse intern; or holds out to the public or represents in any manner that he is licensed or registered to practice as such in this state.

B. The scope of the practice of alcohol or drug abuse counseling, or both, consists of rendering counseling services, as defined by regulation, to individuals, couples, families or groups. The services may include screening, assessment, consultation, development of treatment plans, case management, counseling, referral, appraisal, crisis intervention, education, reporting and recordkeeping."

Chapter 161 Section 5

Section 5. Section 61-9A-6 NMSA 1978 (being Laws 1993, Chapter 49, Section 6, as amended) is amended to read:

"61-9A-6. EXEMPTIONS.--

A. Nothing in the Counseling and Therapy Practice Act shall be construed to prevent:

(1) a person who is licensed, certified or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of his profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from the Counseling and Therapy Practice Act are:

(1) elementary and secondary school counselors acting on behalf of their employer who are otherwise regulated;

(2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(3) duly ordained, commissioned or licensed ministers of a church or lay pastoral-care assistants providing pastoral services on behalf of a church;

(4) a person who is enrolled in an internship or practicum under appropriate supervision and is in the internship or practicum for the sole purpose of acquiring an advanced degree in mental health counseling, marriage and family therapy, art therapy or a degree in substance abuse counseling; and

(5) practitioners of Native American healing arts."

Chapter 161 Section 6

Section 6. Section 61-9A-7 NMSA 1978 (being Laws 1993, Chapter 49, Section 7, as amended) is amended to read:

"61-9A-7. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS--COMPENSATION.--

A. There is created the "counseling and therapy practice board", which is administratively attached to the department.

B. The board shall consist of nine members who are United States citizens and have been New Mexico residents for at least five years prior to their appointment. Of the nine members:

(1) five members shall be professional members, who shall be a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist and an alcohol and drug abuse counselor, licensed under the Counseling and Therapy Practice Act and shall have engaged in a counselor and therapist practice for at least five years. These members shall not hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the board, nor shall they be school owners. The professional mental health counselor shall also represent the registered independent and licensed mental health counselors; and

(2) four members shall represent the public. The public members shall not have been licensed or have practiced as counselor or therapist practitioners or in any other regulated mental health profession, nor have any significant financial interest, either direct or indirect, in the professions regulated.

C. All members of the board shall be appointed by the governor for staggered terms of four years. Each member shall hold office until his successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms.

D. The governor may appoint professional board members from a list of nominees submitted by qualified individuals and organizations, including the New Mexico counseling association, the New Mexico association for marriage and family therapy, the New Mexico art therapy association and the alcohol and drug directors association.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. The board shall elect annually from its membership a chairman and a secretary and other officers as necessary to carry out its duties.

G. The board shall meet at least twice a year and at other times deemed necessary. Other meetings may be called by the chairman upon the written request of three

members of the board. A simple majority of the board members shall constitute a quorum of the board."

Chapter 161 Section 7

Section 7. Section 61-9A-9 NMSA 1978 (being Laws 1993, Chapter 49, Section 9, as amended) is amended to read:

"61-9A-9. BOARD--POWERS AND DUTIES.--

A. The board may:

(1) adopt in accordance with the Uniform Licensing Act and file in accordance with the State Rules Act rules necessary to carry out the provisions of the Counseling and Therapy Practice Act;

(2) select and provide for the administration of, at least, semiannual examinations for licensure;

(3) establish the passing scores for examinations;

(4) take any disciplinary action allowed by and in accordance with the Uniform Licensing Act;

(5) censure, reprimand or place a licensee or registrant on probation for a period not to exceed one year;

(6) require and establish criteria for continuing education;

(7) establish by rule procedures for receiving, investigating and resolving complaints;

(8) approve appropriate supervision and post-graduate experience for persons seeking licensure or registration;

(9) provide for the issuance of licenses and certificates of registration;

(10) determine eligibility of individuals for licensure or registration;

(11) set fees for administrative services, licenses and registration, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

(12) establish criteria for supervision and supervisory requirements;

(13) establish a code of ethics; and

(14) establish committees.

B. The board may establish a standards committee for each licensed profession. The members of each standards committee shall be appointed by the board with the consent of the department and shall include at least one board member from the licensed profession and at least one public board member. The board member representing each respective profession shall chair its standards committee and the committee shall:

(1) recommend and periodically review a code of ethics;

(2) review license applications and recommend approval or disapproval;

(3) develop criteria for supervision; and

(4) recommend rules and regulations.

C. Members of the standards committees or other committees may be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance. These members shall not hold any elected office in any professional organization of counseling, psychology or closely related field during their tenure on the standards committees."

Chapter 161 Section 8

Section 8. Section 61-9A-10 NMSA 1978 (being Laws 1993, Chapter 49, Section 10) is amended to read:

"61-9A-10. PROFESSIONAL MENTAL HEALTH COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or an allied mental health field from an accredited institution;

C. demonstrates professional competency by passing an examination as prescribed by the board;

D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate supervision consisting of at least one hundred supervision hours; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 161 Section 9

Section 9. Section 61-9A-11 NMSA 1978 (being Laws 1993, Chapter 49, Section 11) is amended to read:

"61-9A-11. PROFESSIONAL CLINICAL MENTAL HEALTH

COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or an allied mental health field from an accredited institution. Effective July 1, 1998, the applicant must have a master's degree and a total of no less than forty-eight graduate hours in the mental health clinical core curriculum;

C. demonstrates professional competency by passing an examination as prescribed by the board;

D. has a minimum of two years of professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of face-to-face supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 161 Section 10

Section 10. A new section of the Counseling and Therapy Practice Act is enacted to read:

"PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees within the July 1, 2000 through July 1, 2004 period and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a grandfathered professional mental health counselor license that was applied for prior to July 1, 1994;

C. holds a master's or doctoral degree and a total of sixty graduate hours or more;

D. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board, or documentation of ten thousand hours of client contact experience, including at least three hundred hours of face-to-face supervision of which at least one hundred hours are individual;

E. has a minimum of five thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision of which one hundred hours are individual; and

F. is of good moral character with conduct consistent with the code of ethics."

Chapter 161 Section 11

Section 11. Section 61-9A-12 NMSA 1978 (being Laws 1993, Chapter 49, Section 12) is amended to read:

"61-9A-12. MARRIAGE AND FAMILY THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a marriage and family therapist to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree with a focus in marriage and family therapy or meets the requirements of the core curriculum in marriage and family therapy from an accredited institution;

C. demonstrates professional competency by passing an examination as prescribed by the board;

D. has a minimum of two years of postgraduate marriage and family therapy experience consisting of one thousand client contact hours and two hundred hours of appropriate supervision, of which one hundred hours of such supervision was on an individual basis; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 161 Section 12

Section 12. Section 61-9A-13 NMSA 1978 (being Laws 1993, Chapter 49, Section 13) is amended to read:

"61-9A-13. PROFESSIONAL ART THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional art therapist to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. demonstrates professional competency by passing an examination as prescribed by the board;

C. holds either:

(1) a master's or doctoral degree in art therapy that includes six hundred hours of supervised internship experience from an accredited institution; or

(2) a master's degree in a counseling related field, has a minimum of twenty-one semester hours of sequential course work in the history, theory and practice of art therapy and has completed six hundred hours of supervised internship experience from an accredited institution. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions;

D. has completed one thousand client contact hours of postgraduate experience under appropriate supervision beyond the requirements in Paragraph (1) of Subsection C of this section or two thousand client contact hours of postgraduate experience under appropriate supervision beyond the requirements in Paragraph (2) of Subsection C of this section. Supervision shall be under a nationally licensed or American art therapy association-certified art therapist for at least fifty percent of the working hours; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 161 Section 13

Section 13. Section 61-9A-14 NMSA 1978 (being Laws 1993, Chapter 49, Section 14) is amended to read:

"61-9A-14. REQUIREMENTS FOR LICENSED MENTAL HEALTH COUNSELOR.--The board shall issue a license as a mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. has obtained a master's or doctoral degree in counseling, marriage and family therapy or art therapy or meets the educational requirements for the terminal license;

C. has arranged for a board-approved supervisor and a postgraduate experience plan for working under the appropriate supervision to meet marriage and family therapist, professional art therapist or professional mental health counselor requirements for licensure;

D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and

E. is of good moral character with conduct consistent with the code of ethics."

Chapter 161 Section 14

Section 14. Section 61-9A-14.1 NMSA 1978 (being Laws 1996, Chapter 61, Section 8) is amended to read:

"61-9A-14.1 SUBSTANCE ABUSE INTERN--REQUIREMENTS FOR LICENSURE.--

A. The board shall license as a substance abuse intern any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) possesses a high school diploma or its equivalent;

(4) has arranged for a board-approved supervisor and experience plan for working under appropriate supervision to meet the requirements for licensure as a substance abuse counselor;

(5) has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse;

(6) signs a code of ethics statement, as approved by the board; and

(7) provides three letters of recommendation as established by rule.

B. Effective July 1, 2003, the board shall license as a substance abuse intern any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character, with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) holds an associate degree in counseling or in a related mental health field from an accredited institution and has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse;

(4) has arranged for a board-approved supervisor and experience plan for working under direct observation to meet the requirements for licensure as a substance abuse counselor;

(5) signs a code of ethics statement, as approved by the board; and

(6) provides three letters of recommendation: one letter from a current supervisor, one letter from a current employer and one letter from a professional substance abuse colleague."

Chapter 161 Section 15

Section 15. A new section of the Counseling and Therapy Practice Act is enacted to read:

"ALCOHOL AND DRUG ABUSE COUNSELOR--REQUIREMENTS FOR LICENSURE.--

A. The board shall license as an alcohol and drug abuse counselor any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) possesses a high school diploma or its equivalent;

(4) has passed an examination, as approved by the board;

(5) signs a code of ethics statement, as approved by the board; and

(6) has one of the following combinations of education and experience:

(a) an associate degree or board-approved education and training that includes two hundred seventy-six clock hours with at least ninety hours in each of the fields of alcohol, drug and counseling and six hours of training in professional ethics, four years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision and three hundred hours of approved practicum;

(b) a baccalaureate degree in a related mental health field, two hundred seventy-six clock hours of specific training that may be a part of the degree program and that includes at least ninety hours in each of the fields of alcohol, drug and counseling and six hours of training in professional ethics and three years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision; or

(c) a master's degree in a related mental health field, two hundred seventy-six clock hours of specific training that may be part of the degree program and that includes at least ninety hours in each of the fields of alcohol, drug and counseling and six hours of training in professional ethics and two years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision.

B. Effective July 1, 2003, the board shall license as an alcohol and drug abuse counselor any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) holds a baccalaureate degree in counseling in a related mental health field from an accredited institution;

(4) has passed an examination, as approved by the board;

(5) signs a code of ethics statement, as approved by the board; and

(6) has one of the following combinations of education and experience:

(a) a baccalaureate degree in a related mental health field, two hundred seventy-six clock hours of specific training that may be a part of the degree program and that includes at least ninety hours in each of the fields of alcohol, drug and counseling education and six clock hours of training in professional ethics and three hundred hours of approved practicum and three thousand client contact hours acquired within the last fifteen years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision; or

(b) a master's degree in a related mental health field, two hundred seventy-six clock hours of specific training that may be a part of the degree program and that includes at least ninety hours in each of the fields of alcohol, drug and counseling education and six hours of training in professional ethics and three hundred hours of approved practicum and two thousand client contact hours acquired within the last five years of experience in the practice of alcohol and drug abuse counseling under appropriate supervision."

Chapter 161 Section 16

Section 16. Section 61-9A-22 NMSA 1978 (being Laws 1993, Chapter 49, Section 22) is amended to read:

"61-9A-22. LICENSURE BY CREDENTIALS.--The board may license an applicant without examination if the person possesses a valid regulatory document issued by the appropriate examining board under the laws of any other state or territory of the United

States, the District of Columbia or any foreign nation that in the judgment of the board has requirements substantially equivalent to or exceeding those in the Counseling and Therapy Practice Act.

An applicant for licensing pursuant to this section shall be issued a temporary license by the department upon filing his application along with proof of a valid current regulatory document from another jurisdiction. This temporary license is valid only until the board considers and acts on the application. An applicant is entitled to only one temporary license pursuant to this provision."

Chapter 161 Section 17

Section 17. Section 61-9A-23 NMSA 1978 (being Laws 1993, Chapter 49, Section 23) is amended to read:

"61-9A-23. LICENSE AND REGISTRATION RENEWAL.--

A. Each licensee or registrant shall renew his license or registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. Licensees with even-numbered licenses shall renew in even-numbered years. Licensees with odd-numbered licenses shall renew in odd-numbered years. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. A ninety-day grace period shall be allowed each licensee or registrant after the license or registration period, during which time licenses and registrations may be renewed upon payment of the renewal fee and late fee and compliance with all renewal requirements.

C. Any license or registration granted by the board shall be automatically suspended if the holder fails to apply for the renewal license or registration provided for in this section within a period of three months after the renewal deadline; provided that any license or registration so suspended may be restored by the board upon payment of a reinstatement fee not to exceed one hundred dollars ($100) in addition to any unpaid renewal or late fees. Failure to renew a license or registration within three months from the date of suspension as provided in this section shall cause the license or registration to be automatically revoked. Reinstatement of a revoked license or registration will require the licensee to reapply and meet all current standards for licensure or registration.

D. A person licensed or registered under the Counseling and Therapy Practice Act who wishes to retire from practice shall notify the board in writing before the expiration of his current license or registration. If, within a period of five years from the year of retirement, the licensee or registrant wishes to resume practice, he shall so notify the board in writing, and upon giving proof of completing such continuing education as

prescribed by rule of the board and the payment of an amount equivalent to all lapsed renewal fees, his license or registration shall be restored to him in full effect."

Chapter 161 Section 18

Section 18. Section 61-9A-24 NMSA 1978 (being Laws 1993, Chapter 49, Section 24, as amended) is amended to read:

"61-9A-24. LICENSE AND REGISTRATION FEES.--Applicants for licensure or registration shall pay biennial fees set by the board in an amount not to exceed:

A. for application for initial licensure or registration, seventy-five dollars ($75.00), which is not refundable;

B. for licensure or renewal as a professional mental health counselor, three hundred dollars ($300);

C. for licensure or renewal as a clinical professional mental health counselor, marriage and family therapist or professional art therapist, four hundred twenty dollars ($420);

D. for registration or renewal as a registered mental health counselor or registered independent mental health counselor, two hundred forty dollars ($240);

E. for all examinations, seventy-five dollars ($75.00) or, if a national examination is used, an amount that shall not exceed the national examination costs by more than twenty-five percent;

F. for a duplicate or replacement license or registration, twenty-five dollars ($25.00);

G. for failure to renew a license or registration within the allotted grace period, a late penalty fee not to exceed one hundred dollars ($100);

H. reasonable administrative fees; and

I. for licensure, registration or renewal as an alcohol and drug abuse counselor, an alcohol abuse counselor, a drug abuse counselor or a substance abuse intern, two hundred dollars ($200)."

Chapter 161 Section 19

Section 19. Section 61-9A-26 NMSA 1978 (being Laws 1993, Chapter 49, Section 26, as amended) is amended to read:

"61-9A-26. LICENSE AND REGISTRATION--DENIAL, SUSPENSION AND REVOCATION--FINES AND REPRIMAND.--

A. In accordance with the procedures established by the Uniform Licensing Act, the board may deny, suspend or revoke a license or registration held or applied for under the Counseling and Therapy Practice Act, may fine or reprimand a licensee or registrant or take any other action provided for in the Uniform Licensing Act, upon grounds that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or registration provided for in the Counseling and Therapy Practice Act;

(2) is adjudicated mentally incompetent by regularly constituted authorities;

(3) is found guilty of a felony or misdemeanor involving moral turpitude;

(4) is found guilty of unprofessional or unethical conduct;

(5) has been using any controlled substances, as defined in the Controlled Substances Act, or alcoholic beverage to an extent or in a manner dangerous to himself or any other person or the public or to an extent that the use impairs his ability to perform the work of a counselor or therapist practitioner;

(6) has violated any provision of the Counseling and Therapy Practice Act or regulations adopted by the board;

(7) is grossly negligent in practice;

(8) willfully or negligently divulges a professional confidence;

(9) demonstrates marked incompetence in practice;

(10) has had a license or registration to practice as a counselor, therapist or other mental health practitioner revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this subsection; or

(11) knowingly and willfully practices beyond the scope of practice, as defined by the board.

B. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

C. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

D. A person who violates any provision of the Counseling and Therapy Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978."

Chapter 161 Section 20

Section 20. Section 61-9A-30 NMSA 1978 (being Laws 1993, Chapter 49, Section 30) is amended to read:

"61-9A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The counseling and therapy practice board is terminated on July 1, 2005 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Counseling and Therapy Practice Act until July 1, 2006. Effective July 1, 2006, the Counseling and Therapy Practice Act is repealed."

Chapter 161 Section 21

Section 21. REPEAL.--Sections 61-9A-17 through 61-9A-21.1 NMSA 1978 (being Laws 1993, Chapter 49, Sections 17 through 21 and Laws 1996, Chapter 61, Section 9) are repealed.

Chapter 161 Section 22

Section 22. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 812, AS AMENDED

CHAPTER 162

RELATING TO INDEMNIFICATION; AMENDING SECTION 56-7-2 NMSA 1978 (BEING LAWS 1971, CHAPTER 205, SECTION 1) TO EXPAND COVERAGE OF PROHIBITED INDEMNIFICATION ARRANGEMENTS.

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

Chapter 162 Section 1

Section 1. Section 56-7-2 NMSA 1978 (being Laws 1971, Chapter 205, Section 1) is amended to read:

"56-7-2. OIL, GAS OR WATER WELLS AND MINERAL MINES--AGREEMENTS, COVENANTS AND PROMISES TO INDEMNIFY VOID.--

A. An agreement, covenant or promise contained in, collateral to or affecting an agreement pertaining to a well for oil, gas or water, or mine for a mineral that purports to indemnify the indemnitee against loss or liability for damages arising from the circumstances specified in Paragraphs (1), (2) or (3) of this subsection is against public policy and is void:

(1) the sole or concurrent negligence of the indemnitee or the agents or employees of the indemnitee;

(2) the sole or concurrent negligence of an independent contractor who is directly responsible to the indemnitee; or

(3) an accident that occurs in operations carried on at the direction or under the supervision of the indemnitee, an employee or representative of the indemnitee or in accordance with methods and means specified by the indemnitee or employees or representatives of the indemnitee.

B. As used in this section, "agreement pertaining to a well for oil, gas or water, or mine for a mineral" means an agreement:

(1) concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging or otherwise rendering services in connection with a well drilled for the purpose of producing or disposing of oil, gas or other minerals or water;

(2) for rendering services in connection with a mine shaft, drift or other structure intended for use in the exploration for or production of a mineral; or

(3) to perform a portion of the work or services described in Paragraphs (1) or (2) of this subsection or an act collateral thereto.

C. A provision in an insurance contract indemnity agreement naming a person as an additional insured or a provision in an insurance contract or any other contract requiring a waiver of rights of subrogation or otherwise having the effect of imposing a duty of indemnification on the primary insured party that would, if it were a direct or collateral agreement described in Subsections A and B of this section, be void, is against public policy and void.

D. Nothing in this section:

(1) deprives an owner of the surface estate of the right to secure indemnity from a lessee, operator, contractor or other person conducting operations for the exploration of minerals on the owner's land; or

(2) affects the validity of a benefit conferred by the Workers' Compensation Act."

HOUSE BILL 861, AS AMENDED

CHAPTER 163

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; RELATING TO AFRICAN AMERICANS; CREATING AN OFFICE OF AFRICAN AMERICAN AFFAIRS; PRESCRIBING POWERS AND DUTIES.

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

Chapter 163 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "African American Affairs Act".

Chapter 163 Section 2

Section 2. DEFINITIONS.--As used in the African American Affairs Act:

A. "fund" means the office on African American affairs fund; and

B. "office" means the office on African American affairs.

Chapter 163 Section 3

Section 3. OFFICE CREATED--POWERS AND DUTIES.--

A. The "office on African American affairs" is created and attached administratively to the human services department.

B. The governor shall appoint a director, who shall work at the pleasure of the governor. The director shall employ other necessary employees, who shall be subject to the provisions of the Personnel Act.

C. The office, in cooperation with the Martin Luther King, Jr. commission, shall:

(1) study issues important to African Americans, including history and culture; education, scholarships and other financial assistance for education and career development; economic and social problems and issues such as jobs, housing, discrimination, family support, youth idleness and crime; and health care, maternal and child health, teen pregnancy, access and other health issues;

(2) secure recognition of African Americans' accomplishments and contributions to New Mexico and the United States;

(3) cooperate with and assist public and private entities dealing with issues important to African Americans;

(4) direct the operations of the office;

(5) where appropriate, conduct periodic conferences throughout the state to inform African Americans of the opportunities available to them through state and private sources, to encourage them to share their history and culture with other New Mexicans and participate in the social and political processes of their communities and to learn from conference participants their needs and problems; and

(6) otherwise act as an advocate for African American citizens of New Mexico.

D. Additionally, the office shall:

(1) act as a clearinghouse for information important to the African American community;

(2) function as the coordinating office for all services and activities of state agencies and programs pertaining to African Americans;

(3) encourage funding and implementation of training programs and other opportunities for African Americans;

(4) promote and develop programs about community resources designed to meet the needs of African Americans;

(5) prepare and submit a budget for the office; and

(6) publish an annual report on the activities and services of the office.

E. The office may:

(1) adopt and promulgate rules in accordance with the State Rules Act to carry out the duties of the office;

(2) accept gifts, grants, donations, bequests and devises from any source to be used to carry out its duties; and

(3) enter into contracts.

Chapter 163 Section 4

Section 4. FUND CREATED--ADMINISTRATION.--The "office on African American affairs fund" is created in the state treasury. The fund shall consist of gifts, grants, donations and bequests. Money in the fund at the end of any fiscal year shall not revert. The fund shall be administered by the office, and disbursements from the fund shall be

made on warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the office or his authorized representative.

Chapter 163 Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 909

CHAPTER 164

RELATING TO MINIMUM WAGES; PROVIDING A METHOD FOR CALCULATING THE MINIMUM WAGE FOR CERTAIN EMPLOYEES.

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

Chapter 164 Section 1

Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

"50-4-22. MINIMUM WAGES.--

A. Every employer, except as provided in Section 50-4-21 NMSA 1978, shall pay the minimum wage rate of four dollars twenty-five cents ($4.25) an hour, excepting that an employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

B. All employees covered by Subsection A of this section who customarily and regularly receive more than thirty dollars ($30.00) a month in tips shall be paid a minimum hourly wage of two dollars twelve and one-half cents ($2.125). The employer may consider tips as part of wages, but such a wage credit shall not exceed fifty percent of the minimum wage. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.

C. No employee covered by the provisions of Subsection A of this section shall be required to work more than forty hours in any week of seven days, unless he is paid one and one-half times his regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be

calculated in accordance with the provisions of the federal Fair Labor Standards Act and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage."

HOUSE BILL 500

CHAPTER 165

RELATING TO HEALTH; AMENDING THE PUBLIC HEALTH ACT TO ADD COMMUNITY MENTAL HEALTH CENTER TO THE DEFINITION OF HEALTH FACILITY.

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

Chapter 165 Section 1

Section 1. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "department" or "division" means the children, youth and families department as to child-care centers and facilities and the department of health as to all other health facilities;

B. "director" means the secretary;

C. "person", when used without further qualification, means any individual or any other form of entity recognized by law;

D. "health facility" means any public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, maternity home or shelter, adult day-care facility, nursing home, intermediate care facility, boarding home not under the control of an institution of higher learning, child-care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center or a health service organization operating as a free-standing hospice or a home health agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a free-standing hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities which, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners; and

E. "secretary" means the secretary of children, youth and families as to child-care centers and facilities and the secretary of health as to all other health facilities."

HOUSE BILL 555

CHAPTER 166

RELATING TO PUBLIC PURCHASING; AMENDING A SECTION OF THE PROCUREMENT CODE PERTAINING TO PUBLIC NOTICE OF INVITATION FOR BIDS.

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

Chapter 166 Section 1

Section 1. Section 13-1-104 NMSA 1978 (being Laws 1984, Chapter 65, Section 77, as amended) is amended to read:

"13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE.--

A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newspapers of general circulation in this state. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures which may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including but not limited to publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

B. The state purchasing agent and all central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than ten thousand dollars ($10,000) to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees. The state purchasing agent or a central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C. As used in this subsection, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. The state purchasing agent and all central purchasing offices

shall make copies of invitations for bids for construction contracts available to prospective bidders. The state purchasing agent or a central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the state purchasing agent or central purchasing office, whichever is applicable."

HOUSE BILL 565

CHAPTER 167

RELATING TO PURCHASING; AMENDING A SECTION OF THE PROCUREMENT CODE PERTAINING TO COOPERATIVE PROCUREMENT AGREEMENTS.

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

Chapter 167 Section 1

Section 1. Section 13-1-135 NMSA 1978 (being Laws 1984, Chapter 65, Section 108) is amended to read:

"13-1-135. COOPERATIVE PROCUREMENT AUTHORIZED.--

A. Any state agency or local public body may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside this state. An approved and signed copy of all cooperative procurement agreements entered into pursuant to this subsection shall be filed with the state purchasing agent. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services or construction.

B. Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually held funds or for other terms and

conditions involving public funds or property included in Section 11-1-4 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act.

C. Central purchasing offices other than the state purchasing agent may cooperate by agreement with the state purchasing agent in obtaining contracts or price agreements, and such contract or agreed prices shall apply to purchase orders subsequently issued under the agreement."

HOUSE BILL 566

CHAPTER 168

RELATING TO ELECTIONS; CHANGING WHEN MIDDLE RIO GRANDE CONSERVANCY DISTRICT ELECTIONS ARE HELD; PROVIDING FOR ABSENTEE-EARLY VOTING AND ABSENT VOTING; PROVIDING POLLING LOCATIONS; ALLOWING WRITE-IN CANDIDATES.

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

Chapter 168 Section 1

Section 1. Section 73-14-20 NMSA 1978 (being Laws 1975, Chapter 262, Section 3, as amended) is amended to read:

"73-14-20. DEFINITIONS.--As used in Sections 73-14-18 through 73-14-32 NMSA 1978:

A. "absent voter" means a qualified elector who has requested an absentee ballot forty days prior to an election;

B. "absentee-early voter" means a qualified elector who has voted early, prior to election day, on an electronic voting machine at a designated absentee-early voter precinct;

C. "benefited area" means that area described by a property appraisal that receives a benefit as a result of the creation of a district for any of the purposes specified in Section 73-14-4 NMSA 1978;

D. "election director" means the person whom the board of directors may request to provide election services by a contract approved by the secretary of state;

E. "election officer" means a person appointed by the board of directors to conduct the election in the absence of an election director and who performs all election services required by statute;

F. "list compiler" means a contractor approved by the board of directors to compile and produce a qualified elector list for a conservancy district;

G. "qualified elector" means an individual who owns real property within the benefited area of the conservancy district and who has provided proof of an ownership interest to one of the sources specified in Subsection B of Section 73-14-20.1 NMSA 1978 within the required time period, or who resides on and owns legal or equitable title in tribal lands and who is over the age of majority;

H. "qualified elector's list" means the list compiled before each election that contains the individual names of all qualified electors; and

I. "residence" means a dwelling that lies partially or completely within the benefited area."

Chapter 168 Section 2

Section 2. Section 73-14-20.1 NMSA 1978 (being Laws 1990, Chapter 48, Section 1, as amended) is amended to read:

"73-14-20.1. QUALIFIED ELECTOR LIST.--

A. The board of directors of the conservancy district may contract for a list compiler before each election to compile and produce a qualified elector's list for the district. The list compiler shall deliver the completed list to the election director no later than forty-five days prior to a district election. An individual who purchases property ninety days prior to an election and whose name does not appear on the qualified elector's list shall not vote in that election. The individual may become certified to vote in a future election by filing his deed of title with the appropriate county clerk at least ninety days before the next conservancy district election.

B. Names of qualified electors shall be obtained from the records of the county clerk of the appropriate county, the appropriate county assessor of the appropriate county, records of the conservancy district or from the census bureau and enrollment records provided by the pueblos. The county assessor of the appropriate county, the county clerk of the appropriate county and the tribal representatives of the appropriate pueblos shall deliver to the election director all records regarding qualified electors of the benefited area no later than the last day of each March before a district election.

C. Updating the qualified elector's list shall consist of adding, for any new qualified elector who has purchased property in the district, the name, address and description of all property owned by the qualified elector in the benefited area and removing the name of any elector who is deceased or is no longer a qualified elector because he no longer owns property within the benefited area.

D. Proof of ownership of land within the benefited area requires one of the following:

(1) a recorded deed or real estate contract indicating current ownership of land within the benefited area;

(2) an individual's name on county clerk records indicating a description of property the individual owns within the benefited area;

(3) an individual's name on a list compiled by the governing body of a pueblo within the benefited area indicating that the individual named is residing on and has legal or equitable title in the pueblo; or

(4) a current property tax bill indicating ownership of land within the benefited area.

E. The election officer or the election director shall distribute to each polling place a current qualified elector's list for the appropriate county. The election officer or the election director shall distribute the qualified elector's list to each polling place within a pueblo located within the benefited area. A qualified elector may vote at any one polling place in the pueblo or county where he owns land. An individual who seeks to cast his vote but finds his name is not on the qualified elector's list shall not be allowed to vote in that election."

Chapter 168 Section 3

Section 3. Section 73-14-24 NMSA 1978 (being Laws 1975, Chapter 262, Section 7, as amended) is amended to read:

"73-14-24. TIME AND PROCEDURE FOR ELECTION.--

A. On the first Tuesday after the first Monday in January prior to the middle Rio Grande conservancy district election, an election proclamation shall be published that includes a list of the offices for which a candidate may file, the date and place at which declarations of candidacy shall be filed and the date of the election. The election proclamation shall be published once in a newspaper of general circulation in the counties in which the election shall be held.

B. The members of the boards of directors created pursuant to provisions of Sections 73-14-18 through 73-14-32 NMSA 1978 shall be elected at an election held on the first Tuesday after the first Monday in June in 2001 and in each odd-numbered year thereafter.

C. The elections for the members of the board of directors of the conservancy district shall be conducted, counted and canvassed as provided in Sections 73-14-18 through 73-14-32 and 73-14-84 through 73-14-86 NMSA 1978. The polls may be opened and closed in the same manner as provided for the general election under the Election Code.

D. If only one candidate has filed a declaration of candidacy for a position to be filled at an election, no declared write-in candidate has filed for a position and there are no questions or bond issues on the ballot, only one polling place for the election may be designated. The one polling place may be located in the office of the election director or in the office of the middle Rio Grande conservancy district."

Chapter 168 Section 4

Section 4. Section 73-14-25 NMSA 1978 (being Laws 1975, Chapter 262, Section 8, as amended) is amended to read:

"73-14-25. DECLARATION OF CANDIDACY--SIGNATURES OF ELECTORS.--

A. Any person who desires to become a candidate for election as a member of the conservancy district board of directors shall file his written declaration of candidacy with the election director or with the election officer at least sixty days before the election. The election officer or the election director shall certify the candidates to the board of directors.

B. The declaration of candidacy shall contain:

(1) a statement that the candidate is a qualified elector of the district and meets the qualifications of a director as required by law;

(2) the candidate's name, address, county of residence and date of declaration of candidacy;

(3) the numerical designation of the position on the board of directors for which he desires to be a candidate;

(4) if a candidate for a position representing a county in the conservancy district, a petition signed by at least seventy-five qualified electors of the district who reside in that county;

(5) if a candidate for the position at large in the conservancy district, a petition signed by at least one hundred twenty-five qualified electors; and

(6) a statement that the candidate resides within the conservancy district and in the county for which he desires to be a candidate on the board of directors."

Chapter 168 Section 5

Section 5. Section 73-14-27 NMSA 1978 (being Laws 1975, Chapter 262, Section 10, as amended) is amended to read:

"73-14-27. ELECTION--LOCATION OF POLLING PLACES--NOTICE OF ELECTION--CREATION OF ABSENT VOTER PRECINCT.--

A. For every conservancy district election, the board of directors shall provide for adequate polling places within the boundaries of the conservancy district. In addition, the board of directors shall provide a polling place at the main office of the conservancy district and may provide such other locations as it deems necessary. The board of directors may also create absentee-early voter and absent voter precincts.

B. Notice of the election shall be published three times in a newspaper of general circulation within each county of the district. Each notice shall state the time, place and purpose of the election and shall be published twenty, ten and five days before the election."

Chapter 168 Section 6

Section 6. Section 73-14-28 NMSA 1978 (being Laws 1975, Chapter 262, Section 11, as amended) is amended to read:

"73-14-28. ELECTION JUDGES.--The election officer or the election director shall select two or more election judges for each polling place established within the conservancy district. The election officer or the election director shall also appoint absentee-early voter and absent voter precinct boards."

Chapter 168 Section 7

Section 7. Section 73-14-31 NMSA 1978 (being Laws 1975, Chapter 262, Section 14, as amended) is amended to read:

"73-14-31. ABSENTEE VOTING BY BALLOT PERMITTED-- PROCEDURE.--

A. In any election of officers of the conservancy district, a qualified elector shall be entitled to vote by absentee ballot. An absentee ballot shall be furnished by the election director in a form prescribed by the board of directors. The election director shall also furnish to each qualified elector requesting an absentee ballot an official inner envelope for use in sealing the completed absentee ballot and an official outer envelope for use in returning the inner envelope to the election director. No absentee ballot shall be delivered or mailed to any person other than the applicant for the ballot.

B. A qualified elector voting by absentee ballot shall secretly mark his ballot, place it in the official inner envelope and securely seal the envelope. The qualified elector shall place the inner envelope inside the outer envelope and securely seal the envelope. The qualified elector shall then sign his name and address on the outer envelope and deliver or mail it to the election director or the election officer.

C. Absentee ballots shall be distributed by the election director or the election officer during the regular hours and days of business from the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election.

D. No absentee ballot shall be counted unless it is received by the election director or election officer prior to the closing of the polls.

E. An absentee ballot received after the closing of the polls on the day of the election shall not be collected by the absent voter precinct board but shall be preserved by the election director or election officer until the time for election contests has expired. In the absence of a court order after expiration of the time for election contests, the election director or election officer shall destroy all late official mailing envelopes without opening them or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the election director or election officer shall count the number of late ballots from voters of the conservancy district and report the number to the election officer and the secretary of state.

F. Prior to the delivery of the absentee ballots to the absentee-early voter and absent voter precinct board, the absentee ballots shall be held unopened at the absentee voter precinct in a locked ballot box. At the close of the polls on election day, the absentee-early voter and absent voter precinct boards shall obtain the absentee ballot box from the election director or election officer and tally the absentee ballots. The presiding judge shall have authority to unlock the absentee ballot box.

G. Absentee ballots shall be counted and tallied as are other ballots for the conservancy district election."

Chapter 168 Section 8

Section 8. A new Section 73-14-31.3 NMSA 1978 is enacted to read:

"73-14-31.3. ABSENTEE-EARLY VOTING--ELECTIONEERING.--

A. A voter may apply to vote absentee-early by completing an absentee-early ballot application on the official form prescribed by the board of directors and printed and furnished by the election director. The form shall identify the applicant and contain information to establish his qualifications as a qualified elector for issuance of an affidavit for absentee-early voting. Each application shall be subscribed and sworn to by the applicant.

B. Once it is determined that the application form is complete, the election director shall mark the application with the date and time of receipt and enter the required information in the absentee ballot register.

C. If the voter is determined to be a qualified elector, the elections director shall inform the voter that his application has been accepted and instruct the voter on how to vote.

D. For the purpose of absentee-early voting, electioneering is not permitted in the election director's office, the middle Rio Grande conservancy district offices or designated satellite locations.

E. For the purpose of this section, "electioneering" means any form of campaigning within one hundred feet of the election director's office, the middle Rio Grande conservancy district office or designated satellite locations and includes the display of signs or distribution of campaign literature."

Chapter 168 Section 9

Section 9. Section 73-14-84 NMSA 1978 (being Laws 1961, Chapter 67, Section 16) is amended to read:

"73-14-84. ELECTION--PROCEDURE.--The board of directors may promulgate necessary and reasonable rules for the procedure to be followed at the polling places, instructions to voters, methods to allow for write-in candidates and methods of determining voter eligibility."

HOUSE BILL 575, AS AMENDED

CHAPTER 169

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR COMMISSIONS FROM CERTAIN SALES BY INDEPENDENT CONTRACTORS.

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

Chapter 169 Section 1

Section 1. Section 7-9-66 NMSA 1978 (being Laws 1969, Chapter 144, Section 57) is amended to read:

"7-9-66. DEDUCTION--GROSS RECEIPTS TAX--COMMISSIONS.--

A. Receipts derived from commissions on sales of tangible personal property which are not subject to the gross receipts tax may be deducted from gross receipts.

B. Receipts of the owner of a dealer store derived from commissions received for performing the service of selling from the owner's dealer store a principal's tangible personal property may be deducted from gross receipts.

C. As used in this section, "dealer store" means a merchandise facility open to the public that is owned and operated by a person who contracts with a principal to act as an agent for the sale from that facility of merchandise owned by the principal."

Chapter 169 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 68, AS AMENDED

CHAPTER 170

RELATING TO MUNICIPALITIES; AMENDING DISTRIBUTIONS FROM THE SMALL CITIES ASSISTANCE FUND; INCREASING MINIMUM AND MAXIMUM DISTRIBUTIONS.

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

Chapter 170 Section 1

Section 1. Section 3-37A-2 NMSA 1978 (being Laws 1979, Chapter 284, Section 2, as amended by Laws 1983, Chapter 205, Section 1 and also by Laws 1983, Chapter 214, Section 1) is amended to read:

"3-37A-2. DEFINITIONS.--As used in the Small Cities Assistance Act:

A. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and incorporated counties and H-class counties;

B. "municipal share" means one and thirty-five one-hundredths percent of the taxable gross receipts as defined in the Gross Receipts and Compensating Tax Act reported annually for each municipality to the taxation and revenue department during a twelve-month period ending June 30;

C. "total municipal share" means the sum of all municipal shares;

D. "statewide per capita average" means the quotient of the total municipal share divided by the total statewide municipal population;

E. "municipal per capita average" means the quotient of the municipal share divided by the municipality's population;

F. "population" means the most recent official census or estimate determined by the bureau of the census or, if neither is available, "population" means an estimate as determined by the local government division of the department of finance and administration;

G. "local tax effort" means the amount produced by a one-fourth of one percent municipal gross receipts tax in the previous fiscal year;

H. "qualifying municipality" means a municipality with a population of less than ten thousand that has enacted on or before the last day of the preceding fiscal year an ordinance or ordinances imposing a municipal gross receipts tax pursuant to Section 7-19D-9 NMSA 1978 at a rate of one-fourth of one percent or more; and

I. "enacted" means adopted by a majority of the members of the governing body of the municipality pursuant to Section 7-19D-9 NMSA 1978 and:

(1) for which no election has been called in the manner and within the time provided by Section 7-19D-9 NMSA 1978; or

(2) which has been approved by a majority of the registered voters voting on the question pursuant to Section 7-19D-9 NMSA 1978."

Chapter 170 Section 2

Section 2. Section 3-37A-3 NMSA 1978 (being Laws 1979, Chapter 284, Section 3, as amended) is amended to read:

"3-37A-3. SMALL CITIES ASSISTANCE FUND--DISTRIBUTION.--

A. The "small cities assistance fund" is created within the state treasury.

B. On January 31 of each year, the local government division of the department of finance and administration shall certify to the taxation and revenue department the population of each municipality in the state.

C. On or before June 10 of each year, the taxation and revenue department shall compute the distribution share of each qualifying municipality. The distribution share shall be an amount equal to the product of the qualifying municipality's population multiplied by the difference between the statewide per capita average and the municipal per capita average less the local tax effort of the qualifying municipality; provided that the distribution share shall not exceed fifty thousand dollars ($50,000) if the qualifying municipality has a population of five thousand or less and thirty-five thousand dollars ($35,000) if the qualifying municipality has a population of more than five thousand but less than ten thousand; and provided that for any municipality with a population of less than ten thousand which does not qualify for a distribution or which qualifies for a distribution of less than the minimum amount, the distribution share shall be the minimum amount; and provided further that if the balance in the small cities assistance fund on the preceding May 30 is less than the sum of the distribution shares calculated pursuant to Subsection C of this section, the taxation and revenue department shall reduce the distribution share of each municipality whose distribution share is in excess of the minimum amount in an amount calculated according to the following formula:

municipal distribution share in excess

of the minimum amount X deficiency in fund

sum of municipal distribution shares in

excess of the minimum amount

so long as no municipality's distribution share is reduced below the minimum amount, and until each municipality's distribution share is reduced to the minimum amount, if necessary; and provided further that if the sum of the distribution shares when each share is reduced to the minimum amount is still in excess of the balance in the small cities assistance fund on the preceding May 30, the taxation and revenue department shall reduce each municipality's minimum amount distribution share by a percentage equal to a percentage computed by dividing the amount by which the fund is insufficient by the sum of all the distribution shares. The taxation and revenue department shall certify the amount of the distribution shares to the state treasurer.

D. The state treasurer shall distribute from the small cities assistance fund on or before June 15 of each year to each qualifying municipality the amount certified by the taxation and revenue department for each qualifying municipality for the period ending May 30 of the preceding year.

E. Immediately after distribution to municipalities from the small cities assistance fund but no later than June 30 of each year, the unexpended or unencumbered balance in the small cities assistance fund remaining after the distribution to the qualifying municipalities shall revert to the general fund.

F. Funds distributed under this section shall be placed in the general fund of the qualifying municipalities receiving distributions.

G. As used in this section, "minimum amount" means:

(1) for a municipality with a population of five thousand or less, thirty thousand dollars ($30,000); and

(2) for a municipality with a population of more than five thousand but less than ten thousand, twenty-five thousand dollars ($25,000)."

Chapter 170 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE

FOR SENATE BILLS 102 AND 253, AS AMENDED

CHAPTER 171

RELATING TO TRADE PRACTICES; AMENDING THE UNFAIR PRACTICES ACT TO INCLUDE ITS APPLICABILITY TO SERVICES PROVIDED BY LICENSED PROFESSIONALS; CHANGING EXEMPTION PROVISION.

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

Chapter 171 Section 1

Section 1. Section 57-12-2 NMSA 1978 (being Laws 1967, Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices Act:

A. "person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchaser and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

(2) in which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state;

D. "unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes but is not limited to:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed; or

(17) failure to deliver the quality or quantity of goods or services contracted for; and

E. "unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts which to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid."

Chapter 171 Section 2

Section 2. Section 57-12-7 NMSA 1978 (being Laws 1967, Chapter 268, Section 6) is amended to read:

"57-12-7. EXEMPTIONS.--Nothing in the Unfair Practices Act shall apply to actions or transactions expressly permitted under laws administered by a regulatory body of New Mexico or the United States, but all actions or transactions forbidden by the regulatory body, and about which the regulatory body remains silent, are subject to the Unfair Practices Act."

SENATE BILL 133, AS AMENDED

CHAPTER 172

RELATING TO WORKERS' COMPENSATION; INCREASING BENEFITS; REMOVING FILING FEES; AMENDING AND REPEALING SECTIONS OF THE WORKERS' COMPENSATION ACT.

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

Chapter 172 Section 1

Section 1. Section 52-1-41 NMSA 1978 (being Laws 1959, Chapter 67, Section 20, as amended) is amended to read:

"52-l-41. COMPENSATION BENEFITS--TOTAL DISABILITY.--

A. For total disability, the worker shall receive, during the period of that disability, sixty-six and two-thirds percent of his average weekly wage, and not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July l, 1987 through December 31, 1999, and thereafter not to exceed a maximum compensation of one hundred percent of the average weekly wage in the state, a week; and to be not less than a minimum compensation of thirty-six dollars ($36.00) a week. Except as provided in Subsections B and C of this section, the worker shall receive compensation benefits for the remainder of his life.

B. For disability resulting from primary mental impairment, the maximum period of compensation is one hundred weeks. For disability resulting in secondary mental impairment, the maximum period of compensation is the maximum period allowable for the disability produced by the physical impairment or one hundred weeks, whichever is greater.

C. For the purpose of paying compensation benefits for death, pursuant to Section 52-l-46 NMSA 1978, the worker's maximum disability recovery shall be deemed to be seven hundred weeks.

D. Where the worker's average weekly wage is less than thirty-six dollars ($36.00) a week, the compensation to be paid the worker shall be his full weekly wage.

E. For the purpose of the Workers' Compensation Act, the average weekly wage in the state shall be determined by the employment security division of the labor department on or before June 30 of each year and shall be computed from all wages reported to the employment security division from employing units, including reimbursable employers, in accordance with the regulations of the division for the preceding calendar year, divided by the total number of covered employees divided by fifty-two.

F. The average weekly wage in the state, determined as provided in Subsection E of this section, shall be applicable for the full period during which compensation is payable when the date of the occurrence of an accidental injury falls within the calendar year commencing January l following the June 30 determination.

G. Unless the computation provided for in Subsection E of this section results in an increase or decrease of two dollars ($2.00) or more, raised to the next whole dollar, the statewide average weekly wage determination shall not be changed for any calendar year."

Chapter 172 Section 2

Section 2. Section 52-1-46 NMSA 1978 (being Laws 1959, Chapter 67, Section 25, as amended) is amended to read:

"52-1-46. COMPENSATION BENEFITS FOR DEATH.--Subject to the limitation of compensation payable under Subsection G of this section, if an accidental injury

sustained by a worker proximately results in his death within the period of two years following his accidental injury, compensation shall be paid in the amount and to the persons entitled thereto as follows:

A. if there are no eligible dependents, except as provided in Subsection C of Section 52-I-l0 NMSA 1978 of the Workers' Compensation Act, the compensation shall be limited to the funeral expenses, not to exceed seven thousand five hundred dollars ($7,500), and the expenses provided for medical and hospital services for the deceased, together with all other sums which the deceased should have been paid for compensation benefits up to the time of his death;

B. if there are eligible dependents at the time of the worker's death, payment shall consist of a sum not to exceed seven thousand five hundred dollars ($7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased should have been paid for compensation benefits up to the time of his death and compensation benefits to the eligible dependents as hereinafter specified, subject to the limitations on maximum periods of recovery provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA 1978;

C. if there are eligible dependents entitled thereto, compensation shall be paid to the dependents or to the person authorized by the director or appointed by the court to receive the same for the benefit of the dependents in such portions and amounts, to be computed and distributed as follows:

(1) to the child or children, if there is no widow or widower entitled to compensation, sixty-six and two-thirds percent of the average weekly wage of the deceased;

(2) to the widow or widower, if there are no children, sixty-six and two-thirds percent of the average weekly wage of the deceased, until remarriage; or

(3) to the widow or widower, if there is a child or children living with the widow or widower, forty-five percent of the average weekly wage of the deceased, or forty percent if such child is not or all such children are not living with a widow or widower and, in addition thereto, compensation benefits for the child or children which shall make the total benefits for the widow or widower and child or children sixty-six and two-thirds percent of the average weekly wage of the deceased. When there are two or more children, the compensation benefits payable on account of such children shall be divided among such children, share and share alike; and

(4) two years' compensation benefits in one lump sum shall be payable to a widow or widower upon remarriage; however, the total benefits shall not exceed the maximum compensation benefit as provided in Subsection B of this section;

D. if there is neither widow, widower nor children, compensation may be paid to the father and mother or the survivor of them, if dependent to any extent upon the worker

for support at the time of the worker's death, twenty-five percent of the average weekly wage of the deceased, and in no event shall the maximum compensation to such dependents exceed the amounts contributed by the deceased worker for their care; provided that if the father and mother or the survivor of them was totally dependent upon such worker for support at the time of the worker's death, he or they shall be entitled to fifty percent of the average weekly wage of the deceased;

E. if there is neither widow, widower nor children nor dependent parent, then to the brothers and sisters and grandchildren if actually dependent to any extent upon the deceased worker for support at the time of the worker's death, thirty-five percent of the average weekly wage of the deceased worker with fifteen percent additional for brothers and sisters and grandchildren in excess of two, with a maximum of sixty-six and two-thirds percent of the average weekly wage of the deceased, and in no event shall the maximum compensation to partial dependents exceed the respective amounts contributed by the deceased worker for their care;

F. in the event of the death or remarriage of the widow or widower entitled to compensation benefits as provided in this section, the surviving children shall then be entitled to compensation benefits computed and paid as provided in Paragraph (1) of Subsection C of this section for the remainder of the compensable period. In the event compensation benefits payable to children as provided in this section are terminated as provided in Subsection E of Section 52-l-l7 NMSA l978, a surviving widow or widower shall then be entitled to compensation benefits computed and paid as provided in Paragraphs (2) and (4) of Subsection C of this section for the remainder of the compensable period; and

G. no compensation benefits payable by reason of a worker's death shall exceed the maximum weekly compensation benefits as provided in Sections 52-1-41 through 52-1-43 and 52-1-47 NMSA l978, and no dependent or any class thereof, other than a widow, widower or children, shall in any event be paid total benefits in excess of seven thousand five hundred dollars ($7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer."

Chapter 172 Section 3

Section 3. Section 52-3-14 NMSA 1978 (being Laws 1945, Chapter 135, Section 14, as amended) is amended to read:

"52-3-14. COMPENSATION--LIMITATIONS.--

A. The compensation to which an employee who has suffered disablement, or his dependents, shall be entitled under the New Mexico Occupational Disease Disablement Law is limited to the provisions of that law. No compensation shall be due or payable under the New Mexico Occupational Disease Disablement Law for any disablement which does not result in either the temporary disablement of the employee lasting for more than seven days or in his permanent disablement as herein described or in death;

provided, however, that if the period of temporary disablement of the employee lasts for more than four weeks from the date of the disablement, compensation under the New Mexico Occupational Disease Disablement Law shall be payable in addition to the amount hereinafter stated in a like amount for the first seven days after the date of disablement. But for any such disablement for which compensation is payable under the New Mexico Occupational Disease Disablement Law, the employer shall in all proper cases, as herein provided, pay to the disabled employee or to some person authorized by the director to receive the same, for the use and benefit of the beneficiaries entitled thereto, compensation at regular intervals of no more than sixteen days apart, in accordance with the following, less proper deductions on account of default in failure to give notice of such disablement as required in Section 52-3-19 NMSA 1978.

B. For total disablement, the employee shall receive sixty-six and two-thirds percent of his average weekly wage, not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July 1, 1987, continuing through December 31, 1999, and thereafter a maximum of one hundred percent of the average weekly wage in the state, a week, but not to be less than a minimum compensation of thirty-six dollars ($36.00) a week, during the period of such disablement, but in no event to exceed a period of seven hundred weeks; provided, however, that where his wages are less than thirty-six dollars ($36.00) a week, then the compensation to be paid such employee shall be the full amount of such weekly wages; provided further that the benefits paid or payable during a employee's entire period of disablement shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement.

C. For partial disablement, the benefits shall be a percentage of the benefits payable for total disablement calculated under Subsection B of this section as that percentage is determined pursuant to the provisions of Section 52-3-4 NMSA 1978. In no event shall the duration of benefits extend longer than five hundred weeks.

D. For the purpose of the New Mexico Occupational Disease Disablement Law, the average weekly wage in the state shall be determined by the employment security division of the labor department on or before June 30 of each year and shall be computed from all wages reported to the employment security division from employing units, including reimbursable employers, in accordance with the regulations of the employment security division for the preceding calendar year, divided by the total number of covered employees divided by fifty-two. The first such determination by the employment security division of the average weekly wage in the state shall be made on or before June 30, 1975 from reported wages and covered employees for the calendar year ending December 31, 1974.

E. The average weekly wage in the state, determined as provided in Subsection D of this section, shall be applicable for the full period during which compensation is payable when the date of the occurrence of the disablement falls within the calendar year commencing January 1 following the June 30 determination.

F. Unless the computation provided for in Subsection D of this section results in an increase or decrease of two dollars ($2.00) or more, raised to the next whole dollar, the statewide average weekly wage determination shall not be changed for any calendar year.

G. In case death proximately results from the disablement within the period of two years, compensation benefits to be paid such employee shall be in the amounts and to the persons as follows:

(1) if there are no dependents, the compensation shall be limited to the funeral expenses not to exceed seven thousand five hundred dollars ($7,500) and the expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disablement; or

(2) if there are dependents at the time of death, the payment shall consist of a sum not to exceed seven thousand five hundred dollars ($7,500) for funeral expenses and expenses provided for medical and hospital services for the deceased, together with such other sums as the deceased may have been paid for disability, and a percentage specified in this paragraph for average weekly wages subject to the limitations of the New Mexico Occupational Disease Disablement Law to continue for the period of seven hundred weeks from the date of death of such employee; provided that the total death compensation, unless otherwise specified, payable in any of the cases mentioned in this section shall not be less than the minimum weekly compensation provided in Subsection B of this section or more than the maximum weekly compensation provided in Subsection B of this section and shall be based on and limited to the benefits in effect on the date of the occurrence of the disablement. If there are dependents entitled thereto, compensation shall be paid to the dependents or to the person authorized by the director or the court to receive the same for the benefit of the dependents in such portions and amounts as the director or the court, bearing in mind the necessities of the case and the best interests of the dependents and of the public, may determine, to be computed on the following basis and distributed to the following persons:

(a) to the child or children, if there is no widow or widower entitled to compensation, sixty-six and two-thirds percent of the average weekly wage of the deceased;

(b) to the widow or widower, if there are no children, sixty-six and two-thirds percent of the average weekly wage of the deceased, until remarriage;

(c) to the widow or widower, if there is a child or children living with the widow or widower, forty-five percent of the average weekly wage of the deceased, or forty percent, if such child is not or all such children are not living with a widow or widower, and in addition thereto, compensation benefits for the child or children which shall make the total benefits for the widow or widower and child or children sixty-six and two-thirds percent of the average weekly wage of the deceased. When there are two or more children, the compensation benefits payable on account of such children shall be divided among such children, share and share alike;

(d) two years' compensation benefits in one lump sum shall be payable to a widow or widower upon remarriage; however, the total benefits shall not exceed the maximum compensation benefits as provided in Paragraph (2) of this subsection;

(e) if there is neither widow, widower nor children, then to the father and mother or the survivor of them if dependent to any extent upon the employee for support at the time of his death, twenty-five percent of the average weekly wage of the deceased; provided that if such father and mother or the survivor of them was totally dependent upon such employee for support at the time of his death, he or they shall be entitled to fifty percent of the average weekly wage of the deceased, subject to the maximum weekly compensation provided for in Subsection B of this section;

(f) no disablement benefits payable by reason of an employee's death shall exceed the maximum weekly compensation provided for in Subsection B of this section, and no dependent or any class thereof other than a widow or widower or children shall in any event be paid total benefits in excess of seven thousand five hundred dollars ($7,500) exclusive of funeral expenses and the expenses provided for medical and hospital services for the deceased paid for by the employer.

If there is neither widow, widower nor children nor dependent parent, then to the brothers and sisters, if actually dependent to any extent upon the deceased for support at the time of his death, thirty-five percent of the average weekly wage of the deceased, with fifteen percent additional for brothers or sisters in excess of two, with a maximum of sixty-six and two-thirds percent to be paid to their guardian; provided that the maximum compensation to partial dependents shall not exceed the respective amounts therefor contributed by the deceased employee or the maximum weekly compensation provided for in Subsection B of this section; and

(g) in the event of the death or remarriage of the widow or widower entitled to compensation under this subsection, the surviving children shall then be entitled to compensation computed and paid as in Subparagraph (a) of this paragraph for the remainder of the compensable period, and in the event compensation benefits payable to children as provided in this section are terminated as provided in Paragraph (5) of Subsection A of Section 52-3-13 NMSA 1978, a surviving widow or widower shall then be entitled to compensation benefits computed and paid as provided in Subparagraphs (b) and (d) of this paragraph for the remainder of the compensable period."

Chapter 172 Section 4

Section 4. REPEAL.--Sections 52-1-4.1 and 52-3-9.1 NMSA 1978 (being Laws 1979, Chapter 368, Section 2 and Laws 1980, Chapter 88, Section 4, as amended) are repealed.

SENATE BILL 148, AS AMENDED

CHAPTER 173

RELATING TO POST-SECONDARY EDUCATION; PROVIDING VERIFICATION FUNCTION FOR THE COMMISSION ON HIGHER EDUCATION; PROVIDING FOR AN ANNUAL ACCOUNTABILITY REPORT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 173 Section 1

Section 1. Section 21-1-26.3 NMSA 1978 (being Laws 1986, Chapter 24, Section 3) is amended to read:

"21-1-26.3. VERIFICATION FUNCTION.--The commission on higher education shall annually conduct special verifications of the institutions of higher education. The verifications shall include but not be limited to enrollments, fund balances, compliance with legislation, comparison of expenditures to budgets and other areas to be determined by the commission. Reports on the verifications shall be made annually to the department of finance and administration and the legislative finance committee. The commission shall consider the verification findings in making its annual recommendations to the executive and legislature for higher education funding."

Chapter 173 Section 2

Section 2. Section 21-1-26.7 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 4, Section 2) is amended to read:

"21-1-26.7. ANNUAL ACCOUNTABILITY REPORT.--

A. The commission on higher education shall submit an annual accountability report to the governor and to the legislature by December 31. Prior to publication, the commission on higher education shall distribute a draft of the accountability report to all public, post-secondary institutions and shall allow comment upon the draft report.

B. The commission on higher education in consultation with the public post-secondary educational institution shall develop and adopt the content and a format for the report, including the following information:

(1) student progress and success;

(2) student access and diversity;

(3) affordability and cost of educational services; and

(4) public and community service by the institutions.

C. The commission on higher education shall make no funding recommendation, capital outlay recommendation, distribution or certification on behalf of any public, post-secondary institution that has not submitted the information required pursuant to this section."

Chapter 173 Section 3

Section 3. REPEAL.--Section 21-1-26.6 NMSA 1978 (being Laws 1990 (S.S.), Chapter 4, Section 1) is repealed.

SENATE BILL 163

CHAPTER 174

RELATING TO VETERANS; CHANGING PROVISIONS FOR ISSUANCE OF SPECIAL REGISTRATION PLATES TO DISABLED VETERANS; PROVIDING FOR FREE STATE PARK PASSES TO DISABLED VETERANS.

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

Chapter 174 Section 1

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--ONE HUNDRED PERCENT DISABLED VETERANS--SUBMISSION OF PROOF--PENALTY.--

A. The department shall issue distinctive registration plates for up to two vehicles to a person who is a veteran of the armed forces of the United States, as defined in Section 28-13-7 NMSA 1978, and was one hundred percent disabled while serving in the armed forces of the United States, upon the submission by the person of proof satisfactory to the department that he was one hundred percent disabled while serving in the armed forces of the United States. No fee, including the regular registration fee applicable to the passenger motor vehicle, 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 and 66-3-411 NMSA 1978 shall be issued only one special registration plate of his choice.

B. No person shall falsely represent himself to have been one hundred percent 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 he in fact was not one hundred percent 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."

Chapter 174 Section 2

Section 2. FREE STATE PARK PASSES TO DISABLED VETERANS.--The state parks division of the energy, minerals and natural resources department shall provide one day use pass for entry into the state parks to a one-hundred percent disabled veteran residing in the state. Proof of disability satisfactory to the division is required to obtain the free passes.

Chapter 174 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 190, AS AMENDED

CHAPTER 175

RELATING TO MOTOR VEHICLES; ESTABLISHING A SYSTEM OF GRADUATED DRIVER'S LICENSES FOR PERSONS LESS THAN EIGHTEEN YEARS OF AGE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 175 Section 1

Section 1. A new section of Chapter 66, Article 5 NMSA 1978 is enacted to read:

"DEFINITION.--As used in Sections 66-5-5, 66-5-8 and 66-5-9 NMSA 1978, "traffic violation" means a violation of one or more of the following offenses:

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. homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;

E. injury to pregnant woman by vehicle, as provided in Section 66-8-101.1 NMSA 1978;

F. driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978;

G. refusal to submit to chemical tests, as provided in Section 66-8-111 NMSA 1978;

H. reckless driving, as provided in Section 66-8-113 NMSA 1978;

I. careless driving, as provided in Section 66-8-114 NMSA 1978;

J. racing on highways, as provided in Section 66-8-115 NMSA 1978; and

K. failure to yield, as provided in Sections 66-7-328 through 66-7-332.1 NMSA 1978."

Chapter 175 Section 2

Section 2. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen years of age or over who is enrolled in and attending or has completed a driver education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;

(2) a provisional license to any person fifteen years and six months of age or older:

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months; and

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

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

(a) who has had a provisional license for the twelve-month period immediately preceding the date of the application for the driver's license;

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

(c) who has not been convicted of a traffic violation that was committed during the ninety days prior to applying for a driver's license; and

(d) who has not been adjudicated for an offense involving the use of alcohol or drugs during that period and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of his application; and

(4) to any person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motor 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 regulation 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;

C. who is an habitual drunkard, an habitual user of narcotic drugs or an habitual user of any drug to a degree which renders him incapable of safely driving a motor vehicle;

D. who, within any ten-year period, is three 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. Ten years after being so convicted for the third time, 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 drug in the ten-year period prior to his request for restoration of his license. 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 three previous convictions shall not prohibit issuance of the license applied for. Should the person be subsequently once convicted of driving a motor vehicle while under the influence of intoxicating liquor or drug, the division shall revoke his license for five years, after which time he may apply for restoration of his license as provided in this subsection;

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

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

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

H. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

I. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with regulations of the bureau."

Chapter 175 Section 3

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 who has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school, who has had an instruction permit for at least six months, and who has successfully completed a practice driving component may apply to the division for a provisional license. Successful completion of a practice driving component shall include not less than fifty hours of actual driving by the applicant, including not less than ten hours of night driving. The applicant's parent or guardian shall certify that the applicant has completed the practice driving component.

B. When operating a motor vehicle, a provisional licensee may be accompanied by not more than one passenger under the age of twenty-one who is not a member of the licensee's immediate family. A provisional license entitles the licensee, while having the license in his immediate possession, to operate a motor vehicle upon the public highways between the hours of 5:00 a.m. and midnight. A provisional licensee may drive at any hour if:

(1) accompanied by a licensed driver twenty-one years of age or older;

(2) required by family necessity as evidenced by a signed statement of a parent or guardian;

(3) required by medical necessity as evidenced by a signed statement from medical personnel;

(4) driving to and from work as evidenced by a signed statement from the licensee's employer;

(5) driving to and from school or a religious activity as evidenced by a signed statement of a school or religious official or a parent or guardian; or

(6) required due to a medical emergency.

C. A provisional license shall not be issued to a person convicted of a traffic violation in the ninety days prior to applying for a provisional license. A provisional license shall be in such form as to be readily distinguishable from an unrestricted driver's license and shall contain an indication that the licensee may drive without supervision.

D. Any person fifteen years of age or older who is enrolled in and attending or has completed a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school may apply to the division for an instruction permit. The division, in its discretion after the applicant has successfully passed all parts of the examination other than the driving test, may issue to the applicant an instruction permit. This permit entitles the applicant, while having the permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six months when accompanied by a licensed driver twenty-one years of age or older who has been licensed for at least three years in this state or in another state and who is occupying a seat beside the driver except in the event the permittee is operating a motorcycle.

E. A person fifteen years of age or older who is a student enrolled in and attending a driver education course that is approved by the bureau or offered by a public school and that includes both a DWI education and prevention component and practice driving component may drive a motor vehicle on the highways of this state even though he has not reached the legal age to be eligible for a driver's license or a provisional license. In completing the practice driving component, a person may only operate a motor vehicle on a public highway if:

(1) an approved instructor is occupying a seat beside the person; or

(2) a licensed driver twenty-one years of age or older who has been licensed for at least three years in this state or another state is occupying a seat beside the person.

F. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The permit shall be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

G. Any holder of an instruction permit for a motorcycle shall not carry any other passenger while operating a motorcycle."

Chapter 175 Section 4

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. Every application for an instruction permit, provisional license or driver's license shall be made upon a form furnished by the department. Every 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. Every application shall contain the full name, social security 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.

C. Every applicant shall indicate whether he 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. Every applicant less than eighteen years of age who is making an application to be granted his first New Mexico driver's license shall submit evidence that he has:

(1) successfully completed a driver education course that included a DWI prevention and education program approved by the bureau or offered by a public school. 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 the twelve-month period immediately preceding the date of the application for the driver's license;

(3) complied with restrictions on that license;

(4) not been convicted of a traffic violation committed during the ninety days prior to applying for a driver's license;

(5) not been cited for a traffic violation that is pending at the time of his application; and

(6) not been adjudicated for an offense involving the use of alcohol or drugs during that period and that there are no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of his application.

E. Every applicant eighteen years of age and over, but less than twenty-five years of age, who is making an application to be granted his first New Mexico driver's license shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

F. Every applicant twenty-five years of age and over who has been convicted of driving under the influence of intoxicating liquor or drugs, and who is making an application to be granted his first New Mexico driver's license, shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

G. Whenever 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."

Chapter 175 Section 5

Section 5. Section 66-5-11 NMSA 1978 (being Laws 1978, Chapter 35, Section 233) is amended to read:

"66-5-11. APPLICATION OF MINORS.--

A. The application of any person under the age of eighteen years for an instruction permit, provisional license or driver's license shall be signed and verified by the father, mother or guardian or, in the event there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this article upon a person signing the application of a minor.

B. Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit or license, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct except as otherwise provided in Subsection C of this section.

C. In the event a minor deposits or there is deposited upon his behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by him or, if not the owner of a motor vehicle, with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, the division may accept the application of the minor when signed by one parent or the guardian of the minor, and, while such proof is maintained, the parent or guardian is not subject to the liability imposed under Subsection B of this section."

Chapter 175 Section 6

Section 6. Section 66-5-12 NMSA 1978 (being Laws 1978, Chapter 35, Section 234) is amended to read:

"66-5-12. RELEASE FROM LIABILITY.--Any person who has signed the application of a minor for an instruction permit, a driver's license or provisional license may thereafter file with the division a verified written request that the license of the minor so granted be canceled. Thereupon, the division shall cancel the license of the minor, and the person who signed the application of the minor shall be relieved from the liability imposed under this article, by reason of having signed the application, on account of any subsequent negligence or willful misconduct of the minor in operating a motor vehicle."

Chapter 175 Section 7

Section 7. Section 66-5-13 NMSA 1978 (being Laws 1978, Chapter 35, Section 235) is amended to read:

"66-5-13. CANCELLATION OF LICENSE UPON DEATH OF PERSON SIGNING MINOR'S APPLICATION.--The division upon receipt of satisfactory evidence of the death of the person who signed the application of a minor for an instruction permit, a driver's license or provisional license shall cancel the license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this article. This provision does not apply in the event the minor has attained the age of eighteen years."

Chapter 175 Section 8

Section 8. Section 66-5-24 NMSA 1978 (being Laws 1978, Chapter 35, Section 246) is amended to read:

"66-5-24. AUTHORITY OF DIVISION TO CANCEL LICENSE.--

A. The division is authorized to cancel any instruction permit, driver's license or provisional license upon determining that the licensee was not entitled to the issuance of the license or that the licensee failed to give the required or correct information in his application or committed any fraud in making the application.

B. Upon such cancellation, the licensee must surrender the license so canceled to the division."

Chapter 175 Section 9

Section 9. Section 66-5-29 NMSA 1978 (being Laws 1978, Chapter 35, Section 251, as amended by Laws 1993, Chapter 66, Section 4 and also by Laws 1993, Chapter 78, Section 4) is amended to read:

"66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

A. The division shall immediately revoke the instruction permit, driver's license or provisional license of any driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code, if that person does not attend a driver rehabilitation program pursuant to Subsection E of Section 66-8-102 NMSA 1978;

(3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;

(4) any felony in the commission of which a motor vehicle is used;

(5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or

(7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Any person whose license has been revoked under this section, except as provided in Subsection C, D or E of this section, shall not be entitled to apply for or receive any new license until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and he has exhausted his rights to an appeal.

C. Any person who upon adjudication as a delinquent or conviction is subject to license revocation under this section for an offense pursuant to which he was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to one year.

D. Upon receipt of an order from a court pursuant to Subsection J of Section 32A-2-19 NMSA 1978 or Subsection G of Section 32A-2-22 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978 or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's licenses or driving privileges of the convicted person. Any person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and the person has exhausted his rights to an appeal."

Chapter 175 Section 10

Section 10. Section 66-5-30 NMSA 1978 (being Laws 1978, Chapter 35, Section 252, as amended) is amended to read:

"66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE LICENSE.--

A. The division is authorized to suspend the instruction permit, driver's license or provisional license of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) has been convicted of an offense for which mandatory revocation of license is required upon conviction;

(2) has been convicted as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(3) has been convicted with such frequency of offenses against traffic laws or regulations governing motor vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) is an habitually reckless or negligent driver of a motor vehicle;

(5) is incompetent to drive a motor vehicle;

(6) has permitted an unlawful or fraudulent use of the license;

(7) has been convicted of an offense in another state which if committed in this state would be grounds for suspension or revocation;

(8) has violated provisions stipulated by a district court in limitation of certain driving privileges;

(9) has failed to fulfill a signed promise to appear or notice to appear in court as evidenced by notice from a court, whenever appearance is required by law or by the court as a consequence of any charge or conviction under the Motor Vehicle Code;

(10) has failed to pay a penalty assessment within thirty days of the date of issuance; or

(11) has accumulated seven points, but less than eleven points, and when the division has received a recommendation from a municipal or magistrate judge that the license be suspended for a period not to exceed three months.

B. Upon suspending the license of any person as authorized in this section, the division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed twenty days, not counting Saturdays, Sundays and legal holidays, after receipt of the request in the county wherein the licensee resides unless the division and the licensee agree that the hearing may be held in some other county; provided that the hearing request is received within twenty days from the date that the suspension was deposited in the United States mail. The director may, in his discretion, extend the twenty-day period. Upon the hearing, the director or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon the hearing, the division shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of the license or revoke the license."

Chapter 175 Section 11

Section 11. A new Section 66-5-44.1 NMSA 1978 is enacted to read:

"66-5-44.1. PROVISIONAL LICENSES--DURATION AND FEE--APPROPRIATION.--

A. There shall be paid to the division a fee of thirteen dollars ($13.00) for each provisional license or duplicate provisional license. Each provisional license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. The director with the approval of the governor may increase the amount of the fee provided for in this section by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced driver's license system. The additional amounts

collected pursuant to this subsection are appropriated to the division to defray the expense of the new system of licensing.

C. The fees collected pursuant to the provisions of Subsection A of this section are appropriated to the division to defray the expense of implementing the new system of provisional licensing."

Chapter 175 Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2000.

SENATE FINANCE COMMITTEE SUBSTITUTE

FOR SENATE BILL 256, AS AMENDED

CHAPTER 176

RELATING TO PUBLIC FINANCES; PROVIDING FOR PAYMENTS TO THE STATE BY ELECTRONIC TRANSFER AND CREDIT CARD.

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

Chapter 176 Section 1

Section 1. PAYMENT METHODS AUTHORIZED.--A state agency may accept payment by credit card or electronic means of any amount due the state under any law or program administered by the agency. The state board of finance shall adopt rules on the terms and conditions of accepting payments by credit card or electronic transfer.

Chapter 176 Section 2

Section 2. REPEAL.--Sections 9-11-6.3 and 7-1-13.3 NMSA 1978 (being Laws 1995, Chapter 31, Section 4 and Laws 1988, Chapter 99, Section 3, as amended) are repealed.

SENATE PUBLIC AFFAIRS COMMITTEE

SUBSTITUTE FOR SENATE BILL 272

CHAPTER 177

RELATING TO TAXATION; CHANGING THE RATE OF THE RESOURCES TAX AND THE PROCESSORS TAX ON COPPER; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 177 Section 1

Section 1. Section 7-25-4 NMSA 1978 (being Laws 1966, Chapter 48, Section 4, as amended) is amended to read:

"7-25-4. RATE AND MEASURE OF TAX--DENOMINATION AS "RESOURCES TAX".--

A. For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except potash, molybdenum and copper, three-fourths of one percent;

(2) potash, one-half of one percent;

(3) molybdenum, one-eighth of one percent; and

(4) copper, one-fourth of one percent.

B. The tax imposed by this section shall be referred to as the "resources tax"."

Chapter 177 Section 2

Section 2. Section 7-25-4 NMSA 1978 (being Laws 1966, Chapter 48, Section 4, as amended and as further amended by Section 1 of this act) is repealed and a new Section 7-25-4 NMSA 1978 is enacted to read:

"7-25-4. RATE AND MEASURE OF TAX--DENOMINATION AS "RESOURCES TAX".--

A. For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except potash and molybdenum, three-fourths of one percent;

(2) potash, one-half of one percent; and

(3) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "resources tax"."

Chapter 177 Section 3

Section 3. Section 7-25-5 NMSA 1978 (being Laws 1985 (1st S.S.), Chapter 3, Section 2) is amended to read:

"7-25-5. RATE AND MEASURE OF TAX--DENOMINATION AS "PROCESSORS TAX".--

A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resource:

(1) all natural resources except timber, potash, molybdenum and copper, three-fourths of one percent;

(2) timber, three-eighths of one percent;

(3) potash, one-eighth of one percent;

(4) molybdenum, one-eighth of one percent; and

(5) copper, one-fourth of one percent.

B. The tax imposed by this section shall be referred to as the "processors tax"."

Chapter 177 Section 4

Section 4. Section 7-25-5 NMSA 1978 (being Laws 1985 (1st S.S.), Chapter 3, Section 2, as amended by Section 3 of this act) is repealed and a new Section 7-25-5 NMSA 1978 is enacted to read:

"7-25-5. RATE AND MEASURE OF TAX--DENOMINATION AS "PROCESSORS TAX".--

A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

(1) all natural resources except timber, potash and molybdenum, three-fourths of one percent;

(2) timber, three-eighths of one percent;

(3) potash, one-eighth of one percent; and

(4) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "processors tax"."

Chapter 177 Section 5

Section 5. APPLICABILITY.--The provisions of Sections 1 and 3 of this act shall apply to taxable events occurring on and after July 1, 1999 and prior to July 1, 2002. The provisions of Sections 2 and 4 of this act shall apply to taxable events occurring on and after July 1, 2002.

Chapter 177 Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 and 3 of this act is July 1, 1999. The effective date of the provisions of Sections 2 and 4 of this act is July 1, 2002.

SENATE BILL 337

CHAPTER 178

RELATING TO TAXATION; ENACTING THE CAPITAL EQUIPMENT TAX CREDIT ACT TO PROVIDE A CAPITAL EQUIPMENT TAX CREDIT FOR CERTAIN NEW OR EXPANDED CALL CENTER FACILITIES.

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

Chapter 178 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Capital Equipment Tax Credit Act".

Chapter 178 Section 2

Section 2. FINDINGS AND PURPOSE.--The legislature finds that New Mexico's tax treatment of the purchase of capital equipment by businesses makes New Mexico less attractive than other states for business expansion and relocation. It is the purpose of the Capital Equipment Tax Credit Act to induce call center operations to make major expansions and relocate facilities in New Mexico by providing tax relief on the purchase of capital equipment for such facilities.

Chapter 178 Section 3

Section 3. DEFINITIONS.--As used in the Capital Equipment Tax Credit Act:

A. "call center" means a business that is principally engaged in taking inbound telephone calls initiated by consumers for the purpose of obtaining goods or services;

B. "capital equipment" means equipment that is depreciable for federal income tax purposes;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "rural area" means any area of the state other than a class A county, a class B county that has a net taxable value for rate-setting purposes for any property tax year of more than three billion dollars ($3,000,000,000) and the municipality of Rio Rancho and the area within five miles of the exterior boundaries of Rio Rancho;

E. "tax credit" means the capital equipment tax credit provided in the Capital Equipment Tax Credit Act; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax, or a person to whom an assessment has been made, if the assessment remains unabated or the amount of the assessment has not been paid.

Chapter 178 Section 4

Section 4. CAPITAL EQUIPMENT TAX CREDIT AUTHORIZED.--A capital equipment tax credit may be claimed pursuant to the Capital Equipment Tax Credit Act in an amount equal to the gross receipts tax rate or the compensating tax rate imposed pursuant to the Gross Receipts and Compensating Tax Act, whichever is applicable, applied to the value of capital equipment purchased by a taxpayer for use in an eligible call center in New Mexico. For the purpose of applying the tax credit, the value of capital equipment purchased is the price or the value of other consideration on which the gross receipts or compensating tax was imposed and paid.

Chapter 178 Section 5

Section 5. CAPITAL EQUIPMENT ELIGIBLE FOR TAX CREDIT.--A taxpayer that owns or operates an eligible call center may claim a tax credit for capital equipment that is purchased for use in the call center and on which the gross receipts tax or compensating tax has been paid if the taxpayer applies for the credit and provides evidence satisfactory to the department that:

A. the equipment purchased is capital equipment on which the gross receipts tax or compensating tax was paid;

B. the equipment is purchased on or after July 1, 1999 and was not previously used in New Mexico; and

C. the equipment is used directly in or is an integral part of taking inbound telephone calls or recording or processing messages and is or will be used in a call center that is eligible pursuant to the provisions of the Capital Equipment Tax Credit Act.

Chapter 178 Section 6

Section 6. ELIGIBLE CALL CENTER.--A call center in New Mexico shall be approved by the department as an eligible call center if:

A. the business meets either of the following requirements:

(1) the call center first located in New Mexico after July 1, 1999 and is not related by ownership or control to a business performing similar functions at the same or an adjacent location within the state; or

(2) the call center is an expansion after July 1, 1999 of an existing call center that certifies to the department that the expansion will result in an increase of not less than twenty percent in the value of the call center facility for property tax purposes over three tax years;

B. the call center is located in a rural area; and

C. the owner or operator certifies to the department that the total value over three years of capital equipment purchased for use in the call center will total at least two hundred fifty thousand dollars ($250,000).

Chapter 178 Section 7

Section 7. CLAIMING THE TAX CREDIT.--A taxpayer having applied for and been granted approval for a tax credit by the department pursuant to the Capital Equipment Tax Credit Act may claim an amount of available tax credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico, provided that no taxpayer may claim an amount of available tax credit for any reporting period that exceeds the taxpayer's gross receipts tax, compensating tax or withholding tax due for that reporting period. Any amount of available tax credit not claimed against the taxpayer's gross receipts tax or compensating tax due for a reporting period may be claimed in subsequent reporting periods.

Chapter 178 Section 8

Section 8. REPORTING REQUIREMENTS--WHEN TAXPAYER LIABLE FOR REPAYMENT OF TAX CREDIT.--

A. Every eligible call center claiming a tax credit pursuant to the Capital Equipment Tax Credit Act shall report annually to the department the following information for the prior calendar year:

(1) the total value of capital equipment purchased during that year;

(2) the total amount of tax credit claimed; and

(3) the value of the call center facility for property tax purposes for the year.

B. After claiming a tax credit pursuant to the Capital Equipment Tax Credit Act, if any of the following occur, the taxpayer who owns or operates the business shall be liable for repayment of an amount of the credit claimed pursuant to that act as provided in Subsection C of this section:

(1) the call center no longer meets the requirements of the Capital Equipment Tax Credit Act for qualifying as an eligible call center;

(2) the taxpayer who owns or operates the business closes the call center; or

(3) capital equipment that has not been fully depreciated and for which the tax credit was claimed is moved from the call center.

C. If the provisions of Paragraph (1), (2) or (3) of Subsection B of this section occur within twenty-four months of the date a tax credit pursuant to the Capital Equipment Tax Credit Act is approved, the taxpayer who owns or operates the business shall be liable for repayment of the amount of all credit claimed pursuant to that act. If any of those provisions occur after twenty-four months but before forty-eight months after the date a tax credit is approved, the taxpayer who owns or operates the business shall be liable for repayment of one-half of the amount of all credit claimed.

Chapter 178 Section 9

Section 9. ADMINISTRATION OF ACT.--The department shall administer the Capital Equipment Tax Credit Act in accordance with the provisions of the Tax Administration Act.

Chapter 178 Section 10

Section 10. DELAYED REPEAL.--Sections 1 through 9 of this act are repealed effective July 1, 2004.

Chapter 178 Section 11

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 352, AS AMENDED

CHAPTER 179

RELATING TO PUBLIC ACCOUNTANCY; ENACTING THE 1999 PUBLIC ACCOUNTANCY ACT; CREATING A BOARD; PROVIDING POWERS AND DUTIES; PROVIDING FOR LICENSURE; CREATING A FUND; PRESCRIBING FEES; PRESCRIBING PENALTIES; REPEALING THE FORMER PUBLIC ACCOUNTANCY ACT; MAKING AN APPROPRIATION.

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

Chapter 179 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "1999 Public Accountancy Act".

Chapter 179 Section 2

Section 2. PURPOSE.--The purpose of the 1999 Public Accountancy Act is to protect the public interest by regulating the practice of public accountancy.

Chapter 179 Section 3

Section 3. DEFINITIONS.--As used in the 1999 Public Accountancy Act:

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

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

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

(3) an examination of prospective financial information performed in accordance with the statements on standards for attestation engagements;

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

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

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

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

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

G. "licensee" means a certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm;

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

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

J. "person" means a licensee;

K. "practice" means performing or offering to perform public accountancy for a client or potential client by a person holding himself out to the public as a permit holder or registered firm;

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

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

N. "report" means an opinion or other writing that:

(1) states or implies assurance as to the reliability of any financial statements;

(2) includes or is accompanied by a statement or implication that the person issuing it has special knowledge or competency in accounting or auditing indicated by the use of names, titles or abbreviations likely to be understood to identify the author of the report as a licensee; and

(3) includes the following types of reports as they are defined by board rule:

(a) a review report; or

(b) an audit report;

O. "specialty designation" means a designation indicating professional competence in a specialized area of practice; and

P. "substantial equivalency" means a determination by the board that the education, examination and experience requirements for certification of another jurisdiction are comparable to or exceed the corresponding requirements of the 1999 Public Accountancy Act.

Chapter 179 Section 4

Section 4. BOARD CREATED--TERMS--OFFICERS--MEETINGS--REIMBURSEMENT.--

A. The "New Mexico public accountancy board" is created, composed of seven members appointed by the governor who are citizens of the United States and residents of New Mexico. Four members of the board shall be certified public accountants or registered public accountants who have practiced for at least five calendar years immediately preceding their appointment to the board. Three members shall represent the public and shall not have ever held a certificate or permit to practice public accountancy in any state and shall not have ever had a significant financial interest, direct or indirect, in the public accountancy profession or in a firm. Public members shall have professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons subject to the provisions of the 1999 Public Accountancy Act.

B. Members of the board shall serve for terms of three years or less, staggered in such a manner that the terms of not more than three members expire on January 1 of each year; provided that members appointed and serving pursuant to prior law on the effective date of the 1999 Public Accountancy Act shall serve the remainder of their terms. A vacancy on the board shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, he shall continue to serve until his successor has been appointed and qualified. A professional member of the board whose certificate is suspended or revoked shall automatically cease to be a member of the board. The governor may remove a member of the board for neglect of duty or other just cause.

C. The board shall elect annually from among its members a chairman and such other officers as the board determines. The board shall meet at such times and places as fixed by the board. A majority of the board constitutes a quorum.

D. Members of the board may receive per diem and travel expenses as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

Chapter 179 Section 5

Section 5. BOARD--POWERS AND DUTIES.--

A. The board may:

(1) employ an executive director as an exempt employee and such other personnel as it deems necessary to carry out its duties;

(2) appoint committees or persons to advise or assist it in carrying out the provisions of the 1999 Public Accountancy Act;

(3) retain its own counsel to advise and assist it in addition to advice and assistance provided by the attorney general;

(4) contract, sue and be sued and have and use a seal;

(5) cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of the 1999 Public Accountancy Act and comparable acts of other states; and

(6) adopt and file in accordance with the Uniform Licensing Act and the State Rules Act rules to carry out the provisions of the 1999 Public Accountancy Act, including rules governing the administration and enforcement of the 1999 Public Accountancy Act and the conduct of certificate and permit holders.

B. The board shall maintain a registry of the names and addresses of all certificate and permit holders.

Chapter 179 Section 6

Section 6. FUND CREATED.--

A. The "public accountancy fund" is created in the state treasury. All money received by the board and interest earned on investment of the fund shall be credited to the fund.

B. Payments from the public accountancy fund shall be made upon warrants of the secretary of finance and administration pursuant to vouchers issued by the director in accordance with the budget approved by the department of finance and administration.

C. Money in the fund shall be used only to pay the expenses of carrying out the provisions of the 1999 Public Accountancy Act and rules adopted pursuant to that act.

D. All amounts paid into the fund are appropriated for expenditure by the board for the necessary expenses of the board for execution of the provisions of the Public Accountancy Act. The balance remaining in the fund at the end of a fiscal year shall accumulate to the credit of the fund for use by the board for necessary expenses.

Chapter 179 Section 7

Section 7. QUALIFICATIONS FOR A CERTIFICATE AS A CERTIFIED PUBLIC ACCOUNTANT.--

A. An applicant for a certified public accountant certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts; and

(2) meets the education, experience and examination requirements of the board.

B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.

C. The education requirements for a certificate, which must be met before an applicant is eligible to apply for examination, are as required in this section or Section 8 of the 1999 Public Accountancy Act. After July 1, 1999, the requirement for a certificate is a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, with thirty semester hours in accounting or equivalent as determined by the board.

D. The examination for certification shall be held at least twice a year and shall test the applicant's knowledge of the subjects of accounting and auditing and such other related subjects as prescribed by the board. The time for holding the examination shall be determined by the board and may be changed from time to time. The board shall prescribe the methods of applying for the examination and of grading papers; provided, however, that the board shall to the extent possible provide that the examination, the grading of the examination and the passing grades are uniform with examinations of all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants to perform administrative services with respect to the examination. The board shall administer and proctor the examination with volunteers from the accounting profession.

E. An applicant must pass all sections of the examination in order to qualify for a certificate. A passing grade for each section shall be seventy-five. If he passes two or more but not all sections in an examination sitting, he shall be given credit for those sections and need not sit for re-examination in those sections; provided that he passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed.

F. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.

G. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, he was unable to meet the requirement.

H. An applicant for initial issuance of a certified public accountant certificate shall show that he has had at least one year of experience. After July 1, 2004, the applicant shall have had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience is acceptable if it was gained through employment in government, industry, academia or public practice.

Chapter 179 Section 8

Section 8. QUALIFICATIONS FOR A CERTIFICATE AS A CERTIFIED PUBLIC ACCOUNTANT--JULY 1, 2004.--

A. An applicant for a certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts; and

(2) meets the education, experience and examination requirements of the board.

B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.

C. The education requirements for a certificate, which must be met before an applicant is eligible to apply for examination are as provided in this section or Section 7 of the 1999 Public Accountancy Act. After July 1, 2004, an applicant shall have at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by the board, with thirty semester hours in accounting or equivalent as determined by the board.

D. The examination for certification shall be held at least twice a year and shall test the applicant's knowledge of the subjects of accounting and auditing and other related subjects as prescribed by the board. The time for holding the examination shall be determined by the board and may be changed from time to time. The board shall prescribe the methods of applying for the examination and of grading papers; provided, however, that the board shall to the extent possible provide that the examination, the grading of the examination and the passing grades are uniform with examinations of all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants to perform administrative services with respect to the examination. The board shall administer and proctor the examination with volunteers from the accounting profession.

E. An applicant must pass all sections of the examination in order to qualify for a certificate. A passing grade for each section shall be seventy-five. If he passes two or more but not all sections in an examination sitting, he shall be given credit for those sections and need not sit for re-examination in those sections; provided that:

(1) at that sitting he wrote all sections of the examination for which he does not have credit;

(2) he made a minimum grade of fifty on each section taken at that sitting;

(3) he passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were credited;

(4) at each subsequent sitting at which he seeks to pass an additional section, the applicant writes all sections for which he does not have credit; and

(5) in order to receive credit for passing additional sections in such subsequent sitting, the applicant makes a minimum grade of fifty on sections taken at that sitting.

F. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.

G. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, he was unable to meet the requirement.

H. An applicant for initial issuance of a certified public accountant certificate shall show that he has had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience is acceptable if it was gained through employment in government, industry, academia or public practice.

Chapter 179 Section 9

Section 9. ISSUANCE AND RENEWAL OF CERTIFICATE--MAINTENANCE OF COMPETENCY.--

A. The board shall grant or renew a certificate upon application and demonstration that the applicant's qualifications are in accordance with the 1999 Public Accountancy Act or that they are eligible under the substantial equivalency standard provided in that act.

B. The board may establish by rule for the issuance of biennial certificates and permits, and may prescribe the expiration date of certificates and permits.

C. The board shall grant or deny an application for certification no later than one hundred twenty days after the complete application is filed.

D. If an applicant appeals the decision of the board to deny a certificate, the board may issue a provisional certificate for no longer than ninety days while the board reconsiders its decision.

E. To renew a certificate, a certificate holder shall provide satisfactory proof to the board of continuing professional education that is designed to maintain competency. Continuing professional education courses shall comply with board rules. The board may create an exception to the requirement to maintain continuing professional education for certificate holders who do not provide services to the public. A certificate holder granted such an exception must place the word "inactive" or "retired" adjacent to his certified public accountant title or registered public accountant title on a business card, letterhead or other document or device, except for a board-issued certificate.

F. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

Chapter 179 Section 10

Section 10. SPECIALTY DESIGNATIONS.--The board shall adopt rules allowing the use of specialty designations by certificate holders. Specialty designations shall be consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience or examination.

Chapter 179 Section 11

Section 11. CERTIFICATES ISSUED TO HOLDERS OF A CERTIFICATE, LICENSE OR PERMIT ISSUED BY ANOTHER STATE.--

A. If an applicant does not qualify for reciprocity pursuant to the substantial equivalency standard, the board may issue a certificate to a holder of a certificate, license or permit issued by another state upon a showing that the applicant:

(1) passed the examination required for issuance of his certificate with grades that would have been passing grades at the time in New Mexico;

(2) passed the examination upon which his out-of-state certificate was based and has two years of experience acceptable to the board or meets equivalent requirements

prescribed by board rule, within the ten years immediately preceding the application; and

(3) if the applicant's certificate, license or permit was issued more than four years prior to application, he has fulfilled the board's requirements of continuing professional education.

B. A person licensed by another state who wishes to establish his principal place of business in New Mexico shall apply to the board for a certificate prior to establishing the business. The board may issue a certificate to the person if he provides proof from a board-approved national qualification appraisal service that his certified public accountant qualifications are substantially equivalent to the certified public accountant certification requirements of the 1999 Public Accountancy Act.

C. The board may issue a certificate to a holder of a substantially equivalent foreign designation; provided that:

(1) the foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by New Mexico to obtain such foreign authority's comparable designation;

(2) the foreign designation:

(a) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(b) entitles the holder to issue reports upon financial statements; and

(c) was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law; and

(3) the applicant:

(a) received the designation based on educational and examination standards substantially equivalent to those in effect in New Mexico at the time the foreign designation was granted;

(b) completed an experience requirement in the jurisdiction that granted the foreign designation that is substantially equivalent to the requirement provided for in the 1999 Public Accountancy Act or has completed four years of professional experience in New Mexico or meets equivalent requirements prescribed by the board within the ten years immediately preceding the application; and

(c) passed a uniform qualifying examination on national standards and an examination on the laws, rules and code of ethical conduct in effect in New Mexico that is acceptable to the board.

D. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

E. The board has the sole authority to interpret the application of the provisions of this section.

Chapter 179 Section 12

Section 12. REGISTERED PUBLIC ACCOUNTANTS AND FIRMS OF REGISTERED PUBLIC ACCOUNTANTS.--

A. A person who on July 1, 1999 holds a certificate as a registered public accountant issued pursuant to prior New Mexico law shall be entitled to have his certificate renewed upon fulfillment of the continuing professional education requirements, application and payment of fees prescribed for certificate renewal.

B. A registered public accountant firm holding a permit issued pursuant to prior New Mexico law shall be entitled to have its permit renewed pursuant to the requirements for permit renewal for a certified public accountant firm in the 1999 Public Accountancy Act.

C. As long as a registered public accountant and a registered public accountant firm hold a valid certificate and permit, they shall be entitled to perform attest services to the same extent as a certified public accountant and certified public accountant firm. In addition, they shall be entitled to use the titles "registered public accountant" and "registered public accountants", but no other title.

Chapter 179 Section 13

Section 13. FIRM PERMITS TO PRACTICE, ATTEST EXPERIENCE, PEER REVIEW.--

A. The board may grant or renew a permit to practice as a firm to an applicant that demonstrates its qualification for the permit as provided in Subsection E of this section. A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act in order to provide attest services or use the title "certified public accountant", "CPA", "certified public accountant firm", "CPA firm", "registered public accountant", "RPA", "registered public accountant firm" or "RPA firm".

B. Permits shall be issued and renewed for periods not more than two years, expiring on June 30. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a certificate without prior hearing pursuant to the provisions of the Uniform Licensing Act. A certificate holder whose certificate has been canceled for failure to pay the annual renewal fee may secure reinstatement of his certificate upon payment of the delinquency fee set by the board. If the renewal fee and delinquency fee are not paid by September 30 of the year in which the renewal fee was due, a certificate shall be reinstated only upon application and examination satisfactory to the board.

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

D. If an applicant appeals the decision of the board to deny a permit, the board may issue a provisional permit for no longer than ninety days while the board reconsiders its decision.

E. An applicant for initial issuance or renewal of a permit shall demonstrate that:

(1) a minimum of sixty percent majority of the ownership of the firm, in terms of financial interests, profits, losses, dividends, distributions, options, redemptions and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state. Such partners, officers, shareholders, members or managers, whose principal place of business is in New Mexico, and who perform professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A firm may include owners who are not certificate holders; provided that:

(a) the firm designates a New Mexico certificate holder who is responsible for the proper registration of the firm and identifies that individual to the board;

(b) all owners who are not certificate holders are active individual participants in the certified public accountant firm or registered public accountant firm or affiliated entities; and

(c) the firm complies with the 1999 Public Accountancy Act; and

(2) an individual certificate holder who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm meets the experience requirements set out in the professional standards for such services.

F. An applicant for initial issuance or renewal of a permit shall be required to register each office of the firm within New Mexico with the board and to show that all attest services rendered in this state are under the charge of a person holding a valid certificate issued pursuant to the 1999 Public Accountancy Act or the corresponding provision of prior law or by some other state.

G. An applicant for initial issuance or renewal of a permit shall list all foreign and domestic jurisdictions in which it has applied for or holds permits as a certified public accountant firm and list any past denial, revocation or suspension of a permit by any jurisdiction. Each permit holder or applicant shall notify the board in writing, within thirty days of the occurrence of a change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this state, a change in the number or location of offices within this state, a change in the identity of the persons in charge of such offices and any issuance, denial, revocation or suspension of a permit by another jurisdiction.

H. A firm that falls out of compliance with the provisions of the 1999 Public Accountancy Act due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a six-month period for a firm to take the corrective action. Failure to bring the firm back into compliance within six months shall result in the suspension or revocation of the firm permit.

I. As a condition to permit renewal, the board shall require the applicant to undergo a peer review conducted in accordance with board rules. The review shall include a verification that a person in the firm who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

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

K. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section. Attest services may not be performed by a certificate holder who is a member of a firm that does not meet the certificate holder's ownership requirements set forth in this section.

Chapter 179 Section 14

Section 14. APPOINTMENT OF SECRETARY OF STATE AS AGENT.--Application for a certificate or permit by a person or firm that is domiciled outside of New Mexico shall constitute appointment of the secretary of state as the applicant's agent, upon whom process may be served in an action or proceeding against the applicant or certificate holder arising out of a transaction or operation connected with or incidental to services performed within New Mexico.

Chapter 179 Section 15

Section 15. ENFORCEMENT PROCEDURES--INVESTIGATIONS.--

A. Upon receipt of a complaint or other information suggesting a violation of the 1999 Public Accountancy Act, the board may conduct an investigation to determine whether there is probable cause to institute a proceeding against a person or firm. An investigation is not required when a determination of probable cause can be made without investigation. To aid the investigation, the board or the board's chairman may issue a subpoena to compel a witness to testify or to produce evidence.

B. The board may designate a person to serve as investigating officer to conduct an investigation. The investigating officer shall file a report with the board upon completion of an investigation. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation.

C. Upon a finding of probable cause, if the subject of the investigation is a certificate or permit holder, the board shall direct that a notice of contemplated action be issued in accordance with the 1999 Public Accountancy Act. If the subject of the investigation is not a certificate or permit holder, the board shall take appropriate action as provided in that act. Upon a finding of no probable cause, the board shall close the matter.

D. The board may review the publicly available professional work of a certificate or permit holder without any requirement of a formal complaint or suspicion of impropriety on the part of a particular certificate or permit holder. In the event that such review reveals reasonable grounds for a more specific investigation, the board may proceed pursuant to the 1999 Public Accountancy Act.

Chapter 179 Section 16

Section 16. ENFORCEMENT PROCEDURES--HEARINGS BY THE BOARD.--

A. Hearings by the board shall be conducted in accordance with the provisions of the Uniform Licensing Act.

B. In a case when the board renders a decision imposing discipline against a certificate or permit holder pursuant to the 1999 Public Accountancy Act, the board shall examine its records to determine whether the certificate or permit holder holds a certificate or permit in any other state; and, if so, the board shall notify the board of accountancy of the other state of its decision, by mail, within forty-five days of rendering the decision. The board may also furnish information relating to a proceeding resulting in disciplinary action to another public authority and to private professional organizations having a disciplinary interest in the certificate or permit holder. When an appeal pursuant to New Mexico law is in progress, the notification and furnishing of information to a disciplinary authority shall await the resolution of such appeal. If resolution is in favor of the certificate or permit holder, no automatic notification or furnishing of information shall be made.

Chapter 179 Section 17

Section 17. ENFORCEMENT--UNLAWFUL ACTS.--

A. Except as provided in Subsection C of this section and Section 18 of the 1999 Public Accountancy Act, it is unlawful for a person to engage in practice in New Mexico unless he a licensee.

B. Except as provided in Subsection C of this section and Section 18 of the 1999 Public Accountancy Act, no person or accountant shall issue a report or financial statement of a person or a governmental unit or issue a report using any form of language conventionally used respecting an audit or review of financial statements, unless he holds a current license or permit. The state auditor and his auditing staff are considered to be in the practice of public accountancy.

C. With the exception of persons cited in Section 18 of the 1999 Public Accountancy Act, a person or accountant who prepares a financial accounting and related statements and who is not the holder of a certificate or a permit under the provisions of that act shall use the following statement in the transmittal letter: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) and for the (time period) ending (date). This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited nor reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.".

D. No person or accountant shall indicate by title, designation, abbreviation, sign, card or device that he is a certified public accountant or a registered public accountant unless he is currently certified by the board pursuant to the 1999 Public Accountancy Act or is a firm currently permitted with the board pursuant to that act. Unless he is a holder of a current certificate or permit, no person or accountant shall use any title, initials or designation intended to or substantially likely to indicate to the public that he is a certified public accountant or registered public accountant.

E. No person shall engage in practice unless:

(1) he holds a valid certificate or current permit; or

(2) he is an employee and not a partner, officer, shareholder or member of a firm.

F. No person or firm holding a certificate or permit shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit nor shall he fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a certificate or permit as provided in the 1999 Public Accountancy Act.

H. A licensee shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others; provided, however, that this subsection shall not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payment to the heirs or estates of such persons.

I. A licensee shall not offer or perform professional services for a fee that is contingent upon the findings or results of such services; provided, however, that this subsection shall not apply to professional services involving federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or to professional services for which the fees are to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

J. No licensee shall sign or certify any financial statements if he knows the same to be materially false or fraudulent.

Chapter 179 Section 18

Section 18. EXEMPTIONS--UNLAWFUL ACTS.--

A. Subsection B of Section 17 of the 1999 Public Accountancy Act does not prohibit:

(1) an officer, partner, shareholder, member or employee of a firm from affixing his own signature to a statement or report in reference to the financial affairs of his firm with any wording designating the position, title or office that he holds within the firm;

(2) any act of a public official or employee in the performance of his duties; or

(3) the performance by any persons of other services, including management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports on them.

B. Nothing contained in the 1999 Public Accountancy Act shall prevent a person from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm; provided that the employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a certificate issued pursuant to that act.

Chapter 179 Section 19

Section 19. BUSINESS NAMES--PROHIBITIONS.--

A. No person engaged in practice shall use in a business name the words "company" or "and company" or a similar designation or any abbreviations thereof unless the person

is a firm pursuant to the 1999 Public Accountancy Act and has more than one partner, shareholder or member and the business name contains the name of at least one current or former partner, shareholder or member. A business name may contain only the name or initials of a present or former partner, shareholder or member and the words "and company" or "company" or a similar designation or any abbreviation thereof.

B. Nothing contained in this section shall apply to, affect or limit the right of the remaining partner, shareholder or member or added partners, shareholders or members in the continuous use of a business name adopted before the enactment of the 1999 Public Accountancy Act, even though the person whose name is included in the business name is no longer a partner, shareholder or member.

Chapter 179 Section 20

Section 20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND REMEDIES.--

A. The board may take, after providing any person due process pursuant to the Uniform Licensing Act, corrective action identified in Subsection B of this section following a finding that an applicant or licensee:

(1) committed fraud or deceit in obtaining a certificate or permit;

(2) lost a certificate or permit through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;

(3) failed to maintain compliance with the requirements of the 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit or failed to report material changes to the board, as required by board rule;

(4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;

(5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file his own income or other federal, state or local tax returns;

(6) violated any provision of the 1999 Public Accountancy Act or any rule promulgated by the board pursuant to that act;

(7) violated any rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;

(8) has been convicted of a felony or of any crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, or of any other jurisdiction, if the acts involved would have constituted a crime under the laws of New Mexico;

(9) performed any fraudulent act while holding a certificate or permit issued pursuant to the 1999 Public Accountancy Act or prior law; or

(10) participated in any conduct reflecting adversely upon the licensee's fitness to engage in practice.

B. After a finding by the board that an applicant or licensee has committed a violation identified in Subsection A of this section, the board may take, with or without terms, conditions and limitations, one or more of the following corrective actions:

(1) deny an application or revoke a certificate or permit issued pursuant to the 1999 Public Accountancy Act or corresponding provisions of prior law;

(2) suspend any certificate or permit for a period of not more than five years;

(3) reprimand, censure or limit the scope of practice of a licensee;

(4) impose an administrative fine not exceeding one thousand dollars ($1,000); or

(5) place the licensee on probation.

C. In lieu of or in addition to any remedy specifically provided in Subsection B of this section, the board may require of a licensee:

(1) a quality review conducted in such a fashion as the board may specify;

(2) satisfactory completion of such continuing professional education programs as the board may specify;

(3) correction of the violation identified; and

(4) any other suitable remedial action as determined by the board

D. In any proceeding in which a remedy provided by Subsection B or C of this section is imposed, the board may also require the respondent to pay the costs of the proceeding.

Chapter 179 Section 21

Section 21. REINSTATEMENT.--

A. In any case in which the board has suspended or revoked a certificate or permit or refused to renew the same, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate or permit.

B. The board shall specify by rule the manner in which such applications shall be made, the times within which they shall be made and the circumstances in which hearings shall be held thereon.

C. Before reissuing or terminating the suspension of a certificate or permit pursuant to this section and as a condition thereto, the board may require the applicant to show successful completion of specified continuing professional education or may require a quality review or both.

Chapter 179 Section 22

Section 22. CRIMINAL PENALTIES.--

A. When the board has reason to believe that a person or firm has knowingly engaged in an act or practice that violates the provisions of the 1999 Public Accountancy Act, the board may bring its information to the attention of the district attorney or other appropriate law enforcement officer of any jurisdiction who may bring a criminal proceeding.

B. A person or firm that knowingly violates a provision of the 1999 Public Accountancy Act is guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars ($1,000) or by a definite term of imprisonment not to exceed six months or both.

Chapter 179 Section 23

Section 23. SINGLE ACT EVIDENCE OF PRACTICE.--In an action brought pursuant to the provisions of the 1999 Public Accountancy Act, evidence of the commission of a single act prohibited by that act shall be sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

Chapter 179 Section 24

Section 24. CONFIDENTIAL COMMUNICATIONS.--Except by permission of the client for whom a certificate or permit holder performs a service or the heir, successor or personal representative of the client, a certificate holder shall not voluntarily disclose information communicated to him by the client relating to and in connection with a service rendered to the client by him. Such information shall be deemed confidential; provided that nothing in this section shall prohibit the disclosure of information required to be disclosed by a standard of the public accounting profession in reporting on the examination of a financial statement or prohibit disclosure in a court proceeding, in an investigation or proceeding pursuant to the 1999 Public Accountancy Act, in an ethical investigation conducted by a private professional organization or in the course of a peer review, or to another person active in the organization performing a service for that

client on a need-to-know basis or to a person in the entity who needs this information for the sole purpose of assuring quality control.

Chapter 179 Section 25

Section 25. WORKING PAPERS--CLIENT RECORDS.--

A. A statement, record, schedule, working paper or memorandum made by a certificate or permit holder incident to rendering a service to a client shall be the property of the certificate or permit holder in the absence of an express agreement between him and the client to the contrary, except the report submitted by him to the client and except for a record that is part of the client's records. No such item shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative, except to a partner, stockholder or member of the firm or any combined or merged firm or successor in interest to the certificate or permit holder. Nothing in this section shall prohibit any temporary transfer of a work paper or other material necessary in the course of carrying out a peer review or as otherwise interfering with the disclosure of information pursuant to the 1999 Public Accountancy Act.

B. A certificate or permit holder shall furnish to a client or former client, upon request and reasonable notice:

(1) a copy of his working paper, to the extent that such working paper includes a record that would ordinarily constitute part of the client's record and is not otherwise available to the client; and

(2) an accounting or other record belonging to, or obtained from or on behalf of, the client that he removed from the client's premises or received for the client's account; he may make and retain a copy of a document of the client when they form the basis for work done by him.

Chapter 179 Section 26

Section 26. PRACTICE PRIVILEGE AND DISCIPLINE FOR A CERTIFICATE HOLDER FROM A STATE WHOSE ACCOUNTANCY STATUTE IS SUBSTANTIALLY EQUIVALENT.--

A. A person whose principal place of business is not in New Mexico and who has a valid certificate or license as a certified public accountant from a state that the board-approved qualification appraisal service has verified to be in substantial equivalence with the certified public accountant requirements of the New Mexico 1999 Public Accountancy Act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements. A person may also obtain from the board-approved qualification appraisal service verification that his certified public accountant qualifications are substantially equivalent to New Mexico's certified public accountant licensure requirements. The person shall have all the privileges of certificate holders of

New Mexico without the need to obtain a New Mexico certificate or permit; provided, however, the person shall notify the board of his intent to enter the state under this provision.

B. A certificate or permit holder of another state exercising the privilege afforded by the provisions of this section consents, as a condition of the grant of this privilege:

(1) to the personal and subject matter jurisdiction of the board;

(2) to comply with the provisions of the 1999 Public Accountancy Act; and

(3) to the appointment of the state board that issued its certificate or license as its agent, upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against it.

C. A certificate or permit holder of New Mexico that offers or renders a service or uses its certified public accountant title in another state shall be subject to disciplinary action in New Mexico for an act committed in another state for which it would be subject to discipline for an act committed in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

Chapter 179 Section 27

Section 27. FEES.--The board may collect from certificate holders, permit holders, applicants and others the following fees:

A. for examination, a fee not to exceed one hundred seventy-five dollars ($175) per examination application;

B. for certificate issuance or renewal, a fee not to exceed one hundred seventy-five dollars ($175) per year; provided, however, the board may charge a biennial fee of not more than twice the annual fee;

C. for firm permits, a fee not to exceed one hundred dollars ($100) per year; provided, however, the board may charge a biennial fee of not more than twice the annual fee;

D. for incomplete or delinquent continuing education reports, certificate or permit renewals, a fee not to exceed one hundred dollars ($100) each;

E. for preparing and providing licensure and examination information to others, a fee not to exceed seventy-five dollars ($75.00) per report;

F. reasonable administrative fees for such services as research, record copies, duplicate or replacement certificates or permits;

G. for certificate reinstatement, a fee not to exceed one hundred seventy-five dollars ($175), plus past due fees and penalties;

H. for waiver to comply with continuing professional education requirements, a fee not to exceed seventy-five dollars ($75.00) per application; and

I. for reentry into active certificate status and to comply with continuing education, a fee not to exceed seventy-five dollars ($75.00) per application.

Chapter 179 Section 28

Section 28. CRIMINAL OFFENDER ELIGIBILITY.--Except as otherwise provided in the 1999 Public Accountancy Act, the provisions of the Criminal Offender Employment Act shall govern any consideration or criminal records required or permitted by the 1999 Public Accountancy Act.

Chapter 179 Section 29

Section 29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico public accountancy board is terminated on July 1, 2005 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, 2006. Effective July 1, 2006, the 1999 Public Accountancy Act is repealed.

Chapter 179 Section 30

Section 30. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, MONEY, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND STATUTORY REFERENCES.--

A. On July 1, 1999, all personnel, money, appropriations, property, records and other things of value belonging to the New Mexico state board of public accountancy shall be transferred to the New Mexico public accountancy board. All contracts, including certificates and registrations, in effect for the New Mexico state board of public accountancy shall be binding on the New Mexico public accountancy board. All references in law to the New Mexico state board of public accountancy shall be construed as references to the New Mexico public accountancy board.

B. Nothing in the 1999 Public Accountancy Act shall invalidate or affect any action taken or any proceeding instituted pursuant to a law in effect prior to the effective date of that act. A disciplinary action taken by the board and any delinquency fee or penalty owed pursuant to the Public Accountancy Act shall remain in effect and due unless reviewed and rescinded by the board pursuant to procedures provided in the Uniform Licensing Act and the 1999 Public Accountancy Act.

C. A certificate, permit or firm registration issued pursuant to the Public Accountancy Act that is current on the effective date of the 1999 Public Accountancy Act shall remain current until June 30, 2000.

D. A rule in effect as of June 30, 1999, and not in direct conflict with the 1999 Public Accountancy Act, shall remain in effect until amended or repealed by the New Mexico public accountary board.

Chapter 179 Section 31

Section 31. REPEAL.--Sections 61-28A-1 through 61-28A-28 NMSA 1978 (being Laws 1992, Chapter 10, Sections 1 through 26 and 28 and Laws 1993, Chapter 83, Section 6, as amended) are repealed.

Chapter 179 Section 32

Section 32. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 423, AS AMENDED

CHAPTER 180

RELATING TO COURT AUTOMATION; CLARIFYING PROVISIONS OF LAW REGARDING COURT AUTOMATION BONDS AND DISTRIBUTION OF MONEY FROM THE COURT AUTOMATION FUND; AMENDING LAWS 1996, CHAPTER 41, SECTION 9.

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

Chapter 180 Section 1

Section 1. Laws 1996, Chapter 41, Section 9 is amended to read:

"Section 9. NEW MEXICO FINANCE AUTHORITY REVENUE

BONDS--PURPOSE--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in installments or at one time, prior to July 1, 1999, in an amount not exceeding eight million five hundred thousand dollars ($8,500,000) and, after July 1, 1999, in an additional amount not exceeding three million five hundred thousand dollars ($3,500,000), for the purpose of financing court

automation systems, including acquisition, development and installation of computer hardware and software, for the administrative office of the courts.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section when the director of the administrative office of the courts certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the administrative office of the courts for the purposes described in Subsection A of this section.

C. Except for money appropriated by the legislature from the court automation fund to the administrative office of the courts in fiscal year 1997, the money in the court automation fund shall be distributed to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and other expenses or obligations related to the bonds.

D. The money in the court automation fund shall be distributed monthly to the New Mexico finance authority and deposited in a special bond fund or account of the authority. Any money in the special bond fund or account from distributions made to the authority during any fiscal year, if not needed to pay principal, interest and any other expenses or obligations related to the bonds in that fiscal year, may be appropriated by the legislature to the administrative office of the courts for service contracts related to court automation systems or for the purchase, lease-purchase, financing, refinancing and maintenance of court automation systems in the judiciary. Upon payment of all principal, interest and any other expenses or obligations related to the bonds, the authority shall certify to the administrative office of the courts that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the administrative office of the courts to cease distributing money from the court automation fund to the authority.

E. Any law authorizing the collection of fees for the court automation fund or distribution of the money in the court automation fund to the New Mexico finance authority shall not be amended, repealed or otherwise directly or indirectly modified so as to impair any outstanding revenue bonds that may be secured by a pledge of the distributions of the court automation fund, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge."

Chapter 180 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 438

CHAPTER 181

RELATING TO INSURANCE; SEPARATING THE EXPERIENCE MODIFICATION FACTOR FOR PARTICIPANTS OF THE NEW MEXICO WORKS ACT; CLARIFYING THE EMPLOYMENT STATUS OF PARTICIPANTS OF THE NEW MEXICO WORKS ACT.

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

Chapter 181 Section 1

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

"EXPERIENCE MODIFICATION FACTOR--WORKERS' COMPENSATION CLAIMS--NEW MEXICO WORKS ACT.--

A. Workers' compensation claims by participants as defined in the New Mexico Works Act shall be separately recorded and maintained in the calculation of the experience modification factor used to calculate premiums for the participating employer so that the experience modification factor attributable to claims by participants can be separated from the remainder of the employer's experience modification factor.

B. The separately calculated experience modification factor for the first year of employment of each participant shall not be considered as part of the experience modification factor of any employer. The superintendent of insurance shall promulgate rules to implement this section.

C. For the purpose of this section, "participants"

means participants as defined in the New Mexico Works Act."

Chapter 181 Section 2

Section 2. A new section of the New Mexico Works Act is enacted to read:

"WORK ACTIVITIES--WORKERS' COMPENSATION COVERAGE.--

A. For the purposes of the Workers' Compensation Act:

(1) cash assistance and services paid to participants engaged in any work activity described in Section 27-2B-5 NMSA 1978 shall not be considered wages and shall not be deemed to create an employer-employee or co-employer-employee relationship between the participant and the state; and

(2) payment of a wage subsidy to an employer of a participant shall not be deemed to be payment of wages by the state and shall not be deemed to create an employer-employee or co-employer-employee relationship between the participant and the state.

B. Workers' compensation claims by participants shall be separately recorded and maintained in the calculation of the experience modification factor used to calculate premiums for the participating employer so that the experience modification factor attributable to claims by participants can be separated from the remainder of the employer's experience modification factor.

C. The separately calculated experience modification factor for the first year of employment of each participant shall not be considered as part of the experience modification factor of any employer. The superintendent of insurance shall promulgate rules to implement this section.

D. The department shall ensure that participants undergo safety training prior to employment.

E. Participants in an unpaid work activity described in Section 27-2B-5 NMSA 1978 shall be considered trainees and shall not be eligible for workers' compensation benefits."

SENATE BILL 442, AS AMENDED

CHAPTER 182

RELATING TO EDUCATION; CLARIFYING ADMISSION REQUIREMENTS AT PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS FOR CERTAIN STUDENTS.

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

Chapter 182 Section 1

Section 1. HOME SCHOOL STUDENTS--ADMISSION REQUIREMENTS--PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS.-- In determining the standard of requirements for admission to any public post-secondary educational institution, the board of regents, governing board or community college board shall not require a student who has completed the requirements of a home-based or non-public school educational program and who has submitted test scores that otherwise qualify him for admission to that institution, to obtain or submit proof of having obtained a general equivalency diploma certificate. In determining requirements for admission, the board of regents, governing board or community college board shall evaluate and treat applicants from home-based or non-public educational programs fairly and in a nondiscriminatory manner.

SENATE BILL 519

CHAPTER 183

RELATING TO TAXATION; CREATING THE RURAL JOB TAX CREDIT.

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

Chapter 183 Section 1

Section 1. TAX CREDIT--RURAL JOB TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "rural job tax credit". Until June 30, 2006, every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates in the period beginning July 1, 2000 and ending June 30, 2005. The maximum tax credit amount with respect to each qualifying job is equal to:

(1) twenty-five percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job if the job is performed or based at a location in a tier one area; or

(2) twelve and one-half percent of the first sixteen thousand dollars ($16,000) in wages paid if the qualifying job is performed or based at a location in a tier two area.

B. As used in this section:

(1) "eligible employee" means any individual other than an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust; or

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of any individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust;

(2) "eligible employer" means an employer

who has been approved for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

(3) "metropolitan statistical area" means a metropolitan statistical area in New Mexico as determined by the United States bureau of the census;

(4) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the rural job tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(5) "qualifying job" means a job established by the employer that:

(a) qualifies for in-plant training assistance; and

(b) is occupied by an eligible employee for at least forty-eight weeks of a qualifying period;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a qualifying job;

(7) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and

(d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph;

(8) "tier one area" means:

(a) any municipality within the rural area if the municipality's population according to the most recent federal decennial census is fifteen thousand or less; or

(b) any part of the rural area that is not within the exterior boundaries of a municipality;

(9) "tier two area" means any municipality within the rural area if the municipality's population according to the most recent federal decennial census is more than fifteen thousand; and

(10) "wages" means wages as defined by Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c).

C. The amount of the rural job tax credit shall be six and one-fourth percent of the first sixteen thousand dollars ($16,000) in wages paid for the qualifying job in a qualifying period. The rural job tax credit may be claimed for each qualifying job for a maximum of:

(1) four qualifying periods for each qualifying job performed or based at a location in a tier one area; and

(2) two qualifying periods for each qualifying job performed or based at a location in a tier two area.

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall request the economic development department to certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and whether the qualifying job was in a tier one or tier two area. The economic development department may require the employer to submit such information as is necessary for the economic development department to make the certification requested. When the economic development department obtains sufficient information, either from its own records or from the employer, the economic development department shall make the certification requested.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a copy of the certification from the economic development department made pursuant to Subsection D of this section. If all the requirements of this section have been complied with, the taxation and revenue department may issue to the applicant a document granting a tax credit for the respective qualifying period. The tax credit document shall be numbered for identification and declare its date of issuance and the amount of rural job tax credit allowed for the respective jobs created. Such tax credit documents may be sold, exchanged or otherwise transferred and can be carried forward for a period of three years from the date of issuance. The parties to such a transaction shall notify the

department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

G. The holder of the tax credit document may apply all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax imposed by a municipality or county.

H. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the taxation and revenue department may disclose to any person the balance of rural job tax credit remaining on any tax credit document and the balance of credit remaining on that document for any period.

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of labor or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in effect.

Chapter 183 Section 2

Section 2. CONTINUED APPLICABILITY OF RURAL JOB TAX CREDIT.--The balance of any rural job tax credit granted with respect to qualifying periods occurring after July 1, 2006 or remaining on a tax credit document issued prior to that date may be applied after that date in the manner provided in Section 1 of this act against the holder's modified combined tax liability or corporate or personal income tax liability as if the provisions of Section 1 of this act were still in effect.

Chapter 183 Section 3

Section 3. DELAYED REPEAL.--Section 1 of this act is repealed on July 1, 2006.

Chapter 183 Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.

SENATE BILL 559, AS AMENDED

CHAPTER 184

RELATING TO AVIATION; CREATING THE AIR SERVICE ASSISTANCE PROGRAM; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 184 Section 1

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

"AIR SERVICE ASSISTANCE PROGRAM CREATED.--An air service assistance program is created to provide assistance to airlines in the establishment of regional air service for small communities to and from hub airports in the southwest United States. The division shall administer the air service assistance program and shall establish regulations for eligibility for assistance, including the maximum amount a recipient may receive."

Chapter 184 Section 2

Section 2. APPROPRIATION.--Five hundred thousand dollars ($500,000) is appropriated from the state road fund to the state highway and transportation department for expenditure in fiscal years 1999 and 2000 by the aviation division to carry out the provisions of this act for an air service assistance program. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

Chapter 184 Section 3

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

SENATE BILL 566, AS AMENDED

SIGNED April 6, 1999

CHAPTER 185

RELATING TO EDUCATION; CREATING A TASK FORCE TO REVIEW MERIT PAY FOR TEACHERS IN PUBLIC SCHOOLS.

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

Chapter 185 Section 1

Section 1. TEACHER MERIT PAY TASK FORCE CREATED.--The "teacher merit pay task force" is created.

Chapter 185 Section 2

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES-- COMPENSATION.--

A. The teacher merit pay task force shall be composed of fifteen members reflecting all geographical regions within the state.

B. Members of the task force shall be appointed as follows:

(1) three members appointed by the speaker of the house of representatives, one of whom shall be chosen from the educational fields of teachers or administrators, which include anyone receiving a salary or benefits;

(2) two members appointed by the minority leader of the house of representatives, one of which shall be chosen from the educational fields of teachers or administrators, which include anyone receiving a salary or benefits;

(3) three members appointed by the president pro tempore of the senate, one of whom shall be chosen from the educational fields of teachers or administrators, which include anyone receiving a salary or benefits;

(4) two members appointed by the minority leader of the senate, one of whom shall be chosen from the educational fields of teachers or administrators, which include anyone receiving a salary or benefits;

(5) one ex officio member of the governor's staff appointed by the governor;

(6) three public members, including one student, one business representative and one parent, appointed by the governor; and

(7) one member appointed by the state board of education.

C. Vacancies on the task force shall be filled by appointment in the same manner as the original appointments.

D. The speaker of the house of representatives and the president pro tempore of the senate shall each designate one co-chairman of the task force.

E. No more than four members of the task force shall be composed of teachers or administrators.

Chapter 185 Section 3

Section 3. DUTIES.--

A. After its appointment, the teacher merit task force shall hold one organizational meeting to develop a work plan.

B. The task force shall hold monthly meetings.

C. The task force shall examine the statutes, constitutional provisions, rules and court decisions governing merit pay for teachers in New Mexico and shall recommend legislation or changes, if any are found, to the legislature.

D. The task force shall examine what other states have done to recognize the importance of rewarding educators who strive to improve the quality of education and student performance.

E. The task force shall examine what other states have done to provide incentives for educators who improve student performance in the classroom and who decrease the dropout rate in their classrooms.

F. The task force shall examine what other states have done to reward educators who demonstrate the achievement of excellence with their students.

G. The task force shall examine what other states have done to compensate educators who assume additional educational responsibilities.

H. The task force shall examine how to increase New Mexico's educational proficiency as compared to other states and what role teachers can contribute to student proficiency.

I. The task force shall determine standards for teacher merit pay in the classroom and schools in New Mexico.

Chapter 185 Section 4

Section 4. REPORT.--The teacher merit task force shall make a report of its findings and recommendations for the consideration of the legislative education study committee before the next legislative session.

Chapter 185 Section 5

Section 5. STAFF.--The staff for the teacher merit task force shall be provided by the legislative education study committee and the legislative council service.

Chapter 185 Section 6

Section 6. DELAYED REPEAL.--Sections 1 through 4 of this act are repealed effective January 30, 2000.

SENATE BILL 622, AS AMENDED

CHAPTER 186

RELATING TO CAPITAL PROJECTS; AMENDING THE NEW MEXICO FINANCE AUTHORITY ACT; CREATING A WATER AND WASTEWATER PROJECT GRANT FUND AND PROVIDING FOR GRANTS FOR WATER AND WASTEWATER PROJECTS; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE REVENUE BONDS PAYABLE FROM THE PUBLIC PROJECT REVOLVING FUND FOR THE WATER AND WASTEWATER PROJECT GRANT FUND; DECLARING AN EMERGENCY.

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

Chapter 186 Section 1

Section 1. Section 6-21-6.1 NMSA 1978 (being Laws 1994, Chapter 145, Section 2, as amended) is amended to read:

"6-21-6.1. PUBLIC PROJECT REVOLVING FUND--APPROPRIATIONS TO OTHER FUNDS.--

A. The authority and the department of environment may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act for the purpose of describing and allocating duties and responsibilities with respect to creation of an integrated loan and grant program to be financed through issuance of bonds payable from the public project revolving fund. The bonds may be issued in installments or at one time by the authority in amounts authorized by law. The aggregate amount of bonds authorized and outstanding pursuant to this subsection shall not be greater than the amount of bonds that may be annually repaid from an amount not to exceed thirty-five percent of the governmental gross receipts tax proceeds distributed to the public project revolving fund in the preceding fiscal year. The net proceeds may be used for purposes of the water and wastewater project grant fund as specified in the New Mexico Finance Authority Act or for purposes of the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act, the Solid Waste Act or the Drinking Water State Revolving Loan Fund Act.

B. Public projects funded pursuant to the Wastewater Facility Construction Loan Act, the Rural Infrastructure Act, the Solid Waste Act or the Drinking Water State Revolving Loan Fund Act shall not require specific authorization by law as required in Sections 6-21-6 and 6-21-8 NMSA 1978.

C. At the end of each fiscal year, after all debt service charges, replenishment of reserves and administrative costs on all outstanding bonds, notes or other obligations payable from the public project revolving fund are satisfied, an aggregate amount not to exceed thirty-five percent of the governmental gross receipts tax proceeds distributed to the public project revolving fund in the preceding fiscal year less all debt service charges and administrative costs of the authority paid in the preceding fiscal year on

bonds issued pursuant to this section may be appropriated by the legislature from the public project revolving fund to the following funds for local infrastructure financing:

(1) the wastewater facility construction loan fund for purposes of the Wastewater Facility Construction Loan Act;

(2) the rural infrastructure revolving loan fund for purposes of the Rural Infrastructure Act;

(3) the solid waste facility grant fund for purposes of the Solid Waste Act;

(4) the drinking water state revolving loan fund for purposes of the Drinking Water State Revolving Loan Fund Act; or

(5) the water and wastewater project grant fund for purposes specified in the New Mexico Finance Authority Act.

D. The authority and the department of environment in coordination with the New Mexico finance authority oversight committee may recommend annually to each regular session of the legislature amounts to be appropriated to the funds listed in Subsection C of this section for local infrastructure financing."

Chapter 186 Section 2

Section 2. A new section of the New Mexico Finance Authority Act is enacted to read:

"WATER AND WASTEWATER PROJECT GRANT FUND--CREATION--ADMINISTRATION--PURPOSES.--

A. There is created in the authority the "water and wastewater project grant fund", which shall be administered by the authority. The authority is authorized to establish procedures required to administer the fund in accordance with the New Mexico Finance Authority Act.

B. The following shall be deposited directly into the water and wastewater project grant fund:

(1) the net proceeds from the sale of bonds issued pursuant to the provisions of Section 6-21-6.1 NMSA 1978 for the purposes of the water and wastewater project grant fund and payable from the public project revolving fund;

(2) money appropriated by the legislature to implement the provisions of this section; and

(3) any other public or private money dedicated to the fund.

C. Money in the water and wastewater project grant fund is appropriated to the authority to make grants to qualified entities for water or wastewater public projects pursuant to specific authorization by law for each project and to pay administrative costs of the water and wastewater project grant program.

D. The authority shall adopt rules governing the terms and conditions of grants made from the water and wastewater project grant fund. Grants may be made from the fund only with participation from the qualified entity in the form of a local match. The local match requirement shall be determined by a sliding scale based on the qualified entitys financial capacity to pay a portion of the project from local resources. Grants from the water and wastewater project grant fund may be made only as all or part of financing for a complete project after the authority has determined that the financing for the complete project is cost effective."

Chapter 186 Section 3

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

SENATE BILL 662

SIGNED April 6, 1999

CHAPTER 187

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; REDUCING NONPROFIT GAMING OPERATOR DISTRIBUTIONS; AMENDING A SECTION OF THE GAMING CONTROL ACT.

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

Chapter 187 Section 1

Section 1. Section 60-2E-47 NMSA 1978 (being Laws 1997, Chapter 190, Section 49, as amended) is amended to read:

"60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION.--

A. An excise tax is imposed on the privilege of engaging in gaming activities in the state. This tax shall be known as the "gaming tax".

B. The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licensees from the sale, lease or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease or other transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts;

ten percent of the gross receipts of distributor licensees from the sale, lease or other transfer of gaming devices in or into the state; and twenty-five percent of the net take of every gaming operator licensee. For the purposes of this section, "gross receipts" means the total amount of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

C. The gaming tax imposed on a licensee is in lieu of all state and local gross receipts taxes on that portion of the licensee's gross receipts attributable to gaming activities.

D. The gaming tax is to be paid on or before the fifteenth day of the month following the month in which the taxable event occurs. The gaming tax shall be administered and collected by the taxation and revenue department in cooperation with the board. The provisions of the Tax Administration Act apply to the collection and administration of the tax.

E. In addition to the gaming tax, a gaming operator licensee that is a racetrack shall pay twenty percent of its net take to purses to be distributed in accordance with rules adopted by the state racing commission. A racetrack gaming operator licensee shall spend no less than one-fourth of one percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers.

F. A nonprofit gaming operator licensee shall distribute at least sixty percent of the balance of its net take, after payment of the gaming tax and any income taxes, for charitable or educational purposes."

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE

FOR SENATE BILL 790, AS AMENDED

CHAPTER 188

RELATING TO HEALTH; ELIMINATING THE REQUIREMENT THAT EXCESS BALANCES IN COUNTY INDIGENT HOSPITAL CLAIMS FUNDS BE TRANSFERRED TO THE COUNTY-SUPPORTED MEDICAID FUND.

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

Chapter 188 Section 1

Section 1. Section 27-5-7 NMSA 1978 (being Laws 1965, Chapter 234, Section 7, as amended) is amended to read:

"27-5-7. COUNTY INDIGENT HOSPITAL CLAIMS FUND.--

A. There is created in the county treasury of each county a "county indigent hospital claims fund".

B. Collections under the levy made pursuant to the Indigent Hospital and County Health Care Act and all payments shall be placed into the fund, and the amount placed in the fund shall be budgeted and expended only for the purposes specified in the Indigent Hospital and County Health Care Act, by warrant upon vouchers approved by a majority of the board and signed by the chairman of the board. Payments for indigent hospitalizations shall not be made from any other county fund.

C. The fund shall be audited in the manner that other state and county funds are audited, and all records of payments and verified statements of qualification upon which payments were made from the fund shall be open to the public.

D. Any balance remaining in the fund at the end of the fiscal year shall carry over into the ensuing year, and that balance shall be taken into consideration in the determination of the ensuing year's budget and certification of need for purposes of making a tax levy.

E. Money may be transferred to the fund from other sources, but no transfers may be made from the fund for any purpose other than those specified in the Indigent Hospital and County Health Care Act."

SENATE BILL 320

CHAPTER 189

RELATING TO TAXATION; PROVIDING FOR ADJUSTMENTS OF DISTRIBUTIONS TO POLITICAL SUBDIVISIONS OF CERTAIN EXTRACTIVE INDUSTRY TAXES.

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

Chapter 189 Section 1

Section 1. 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, county, school district or special district of oil and gas ad valorem production tax reduced as a result of a refund requested in December 1998 with respect to production of carbon dioxide.

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."

SENATE BILL 557, AS AMENDED

CHAPTER 190

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT TO CHANGE THE DEFINITION OF "RECEIVED" AND TO PROVIDE A DEDUCTION FOR CERTAIN VOLUMES SOLD BY REGISTERED TRIBAL DISTRIBUTORS.

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

Chapter 190 Section 1

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971, Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS.--As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

B. "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;

C. "distributor" means any person, not including the United States of America or any of its agencies except to the extent now or hereafter permitted by the constitution and laws thereof, who receives gasoline in this state. "Distributor" shall be construed so that a person simultaneously may be both a distributor and a retailer or importer;

D. "drip gasoline" means a combustible hydrocarbon liquid formed as a product of condensation from either associated or nonassociated natural or casing head gas and that remains a liquid at room temperature and pressure;

E. "ethanol blended fuel" means gasoline containing a minimum of ten percent by volume of denatured ethanol, of at least one hundred ninety-nine proof, exclusive of denaturants;

F. "fuel supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains gasoline or gasoline is delivered into it;

G. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

H. "gasoline" means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft except for diesel engine fuel, kerosene, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet-type engines;

I. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code, issued by the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or an Indian nation, tribe or pueblo or any of its political subdivisions, agencies or instrumentalities;

J. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel regardless of whether it is temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

K. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration under Section 66-3-1 NMSA 1978 or used or that may be used on the public

highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

L. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

M. "rack operator" means the operator of a refinery in this state or the owner of gasoline stored at a pipeline terminal in this state;

N. "registered Indian tribal distributor" means an Indian nation, tribe or pueblo recognized by the United States whose reservation or pueblo grant lies wholly or partly in this state, a corporation or other enterprise wholly owned by that Indian nation, tribe or pueblo or a corporation or other enterprise wholly owned by one or more members of that Indian nation, tribe or pueblo that is registered with the department as a distributor pursuant to the Gasoline Tax Act; provided that the department shall register a corporation or other enterprise as an Indian tribal distributor only upon certification by the Indian nation, tribe or pueblo that the corporation or other enterprise is wholly owned by that nation, tribe or pueblo or wholly owned by one or more of its members;

O. "retailer" means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. "Retailer" shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

Q. "taxpayer" means a person required to pay gasoline tax;

R. "unloaded" means removal of gasoline from tank cars, tank trucks, tank wagons or other types of transportation equipment into a nonmobile container at the place at which the unloading takes place; and

S. "wholesaler" means a person who is not a distributor and who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles. "Wholesaler" shall be construed so that a person simultaneously may be a wholesaler and a retailer."

Chapter 190 Section 2

Section 2. A new section of the Gasoline Tax Act, Section 7-13-2.1 NMSA 1978, is enacted to read:

"7-13-2.1. WHEN GASOLINE RECEIVED AND BY WHOM.--

A. Gasoline that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by a person is received by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed there into a tank or other container from which sales or deliveries not involving transportation are made; however:

(1) when gasoline is delivered at the refinery or pipeline terminal to a person registered as a distributor pursuant to the Gasoline Tax Act, then it is received there by the distributor to whom it is delivered at the time of the delivery;

(2) when gasoline is delivered at the refinery or pipeline terminal to a person not registered as a distributor pursuant to the Gasoline Tax Act for the account of a person that is registered as a distributor, it is received there by the distributor for whose account it is delivered at the time of delivery; and

(3) gasoline is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. Gasoline imported into New Mexico by any means other than in the fuel supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the gasoline at the time of importation receives the gasoline at the time and place of importation unless the gasoline is delivered to a person who is registered as a distributor pursuant to the Gasoline Tax Act, in which case the distributor is deemed to have received the gasoline at the time and place of importation.

C. Any product other than gasoline that is blended in this state to produce gasoline other than at a refinery or pipeline terminal is received by the person who is the owner of the gasoline at the time and place the blending is completed.

D. If gasoline is received within the exterior boundaries of an Indian reservation or pueblo grant and the gasoline tax is not paid with respect to the gasoline by the person receiving the gasoline within the exterior boundaries of the Indian reservation or pueblo grant, the gasoline is also received when the gasoline is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle. In such a case, the person who owns the gasoline immediately after the time of transportation off the reservation or pueblo grant or, if the gasoline is delivered to a person registered as a distributor pursuant to the Gasoline Tax Act, the distributor receives the gasoline at the time and place the gasoline is transported off the reservation or pueblo grant."

Chapter 190 Section 3

Section 3. Section 7-13-4 NMSA 1978 (being Laws 1991, Chapter 9, Section 32, as amended) is amended to read:

"7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the gasoline tax due, the following amounts of gasoline may be deducted from the total amount of gasoline received in New Mexico during the tax period, provided satisfactory proof thereof is furnished to the department:

A. gasoline received in New Mexico, but exported from this state by a rack operator, distributor or wholesaler other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the gasoline is registered in or licensed by the destination state to pay that state's gasoline or equivalent fuel tax;

(2) proof is submitted that the destination state's gasoline or equivalent fuel tax has been paid or is not due with respect to the gasoline; or

(3) the destination state's gasoline or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. gasoline received in New Mexico sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Gasoline sold to the United States includes gasoline delivered into the supply tank of a government-licensed vehicle of the United States;

C. gasoline received in New Mexico sold to an Indian nation, tribe or pueblo or any political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or any political subdivision, agency or instrumentality thereof. Gasoline sold to an Indian nation, tribe or pueblo includes gasoline delivered into the supply tank of a government-licensed vehicle of the Indian nation, tribe or pueblo;

D. gasoline received in New Mexico, dyed in accordance with department regulations and used in any manner other than for propulsion of motor vehicles on the highways of this state or motorboats or activities ancillary to that propulsion;

E. gasoline received in New Mexico and sold at retail by a registered Indian tribal distributor if:

(1) the sale occurs on the Indian reservation, pueblo grant or trust land of the distributor's Indian nation, tribe or pueblo;

(2) the gasoline is placed into the fuel supply tank of a motor vehicle on that reservation, pueblo grant or trust land; and

(3) the Indian nation, tribe or pueblo has certified to the department that it has in effect an excise, privilege or similar tax on the gasoline; provided that the volume of gasoline

deducted pursuant to this subsection shall be the total gallons sold in accordance with the provisions of this subsection multiplied by a fraction the numerator of which is the rate of the tribal tax certified to the department by the Indian nation, tribe or pueblo and the denominator of which is the rate of the gasoline tax imposed pursuant to the Gasoline Tax Act, but if the fraction exceeds one, it shall be one for purposes of determining the deduction; and

F. gasoline received in New Mexico and sold by a registered Indian tribal distributor from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land; provided the department certifies that the distributor claiming the deduction sold no less than one million gallons of gasoline from a nonmobile storage container located within that distributor's Indian reservation, pueblo grant or trust land for resale outside that distributor's Indian reservation, pueblo grant or trust land during the period of May through August 1998; and provided further that the amount of gasoline deducted by a registered Indian tribal distributor pursuant to this subsection shall not exceed two million five hundred thousand gallons per month, calculated as a monthly average during the calendar year. Volumes deducted pursuant to Subsection E of this section shall not be deducted pursuant to this subsection."

Chapter 190 Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 588, AS AMENDED

CHAPTER 191

RELATING TO NATURAL RESOURCES; AUTHORIZING THE NEGOTIATION BY THE STATE GAME COMMISSION FOR THE ACQUISITION OF EAGLE NEST DAM AND RESERVOIR.

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

Chapter 191 Section 1

Section 1. FINDINGS.--The legislature finds that:

A. Eagle Nest dam and reservoir is a valuable asset that would provide for the state needed recreational value in the form of boating and fishing, wildlife value as a nature reserve, economic value through the use of its appurtenant water rights and flood control value in its excess of seventy-eight thousand acre-feet of reservoir storage and, if properly managed, could add substantially to the public welfare of the state;

B. Eagle Nest dam and reservoir is available for acquisition by the state and its acquisition by the state would preserve this valuable asset for future generations of New Mexicans; and

C. previous legislative memorials have urged the acquisition of Eagle Nest dam and reservoir by the state and it is in the public interest of the state to enter into negotiations for its acquisition.

Chapter 191 Section 2

Section 2. STATE GAME COMMISSION--DUTY TO NEGOTIATE.--

A. The state game commission shall enter into negotiations with the owners of Eagle Nest dam and reservoir for acquisition of all or part of the asset through cash purchase, land exchanges or other arrangements acceptable to the parties.

B. In negotiating a value for Eagle Nest dam and reservoir, the price shall be based upon bona fide appraisals using techniques and practices acceptable in the trade and shall consider the costs to the state should the dam and reservoir become an asset of the state.

C. The state game commission shall report the result of the negotiations and its recommendations to the second session of the forty-fourth legislature.

Chapter 191 Section 3

Section 3. DELAYED REPEAL.--The provisions of this act are repealed February 1, 2000.

SENATE BILL 638

CHAPTER 192

AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE ADDITIONAL REVENUE BONDS AND TO MAKE AN INTERIM CASH LOAN PRIOR TO ISSUANCE OF THE BONDS TO IMPLEMENT THE TAXATION AND REVENUE INFORMATION MANAGEMENT SYSTEMS PROJECT; DECLARING AN EMERGENCY.

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

Chapter 192 Section 1

Section 1. Laws 1997, Chapter 125, Section 12 is amended to read:

"Section 12. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE--APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in installments or at one time in a total amount not exceeding thirty-three million seven hundred nine thousand eight hundred dollars ($33,709,800) for the purpose of financing the taxation and revenue information management systems project.

B. The New Mexico finance authority may issue and sell revenue bonds authorized by this section from time to time when the secretary of taxation and revenue, with the concurrence of the legislative finance committee, certifies the need for issuance of the bonds. The net proceeds from the sale of the bonds are appropriated to the taxation and revenue department for the purpose of financing the taxation and revenue information management systems project.

C. The revenue from administrative fees distributed monthly to the New Mexico finance authority shall be pledged irrevocably for the payment of the principal, interest and any expenses or other obligations related to the bonds.

D. The administrative fees distributed to the New Mexico finance authority shall be deposited in a separate fund or account of the authority. Upon payment of all principal, interest and any other expenses or obligations related to the bonds, the authority shall certify to the taxation and revenue department that all obligations for the bonds issued pursuant to this section have been fully discharged or provision has been made for their discharge and direct the department to cease the distributions to the authority of administrative fees pursuant to Section 1 of this act.

E. Any law authorizing the imposition or distribution of the administrative fees or that affects the administrative fees shall not be amended, repealed or otherwise directly or indirectly modified so as to impair any outstanding revenue bonds that may be secured by a pledge of the administrative fees, unless the revenue bonds have been discharged in full or provision has been made for a full discharge.

F. The New Mexico finance authority is authorized to make an interim cash loan from the public project revolving fund in an amount not to exceed two million five hundred thousand dollars ($2,500,000) prior to issuance of the bonds pursuant to this section.

G. The New Mexico finance authority is authorized to make an interim cash loan in fiscal year 1999 from the public project revolving fund in an amount not to exceed five million dollars ($5,000,000) to the taxation and revenue department for the purpose of implementing the taxation and revenue information management systems project."

Chapter 192 Section 2

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

SENATE BILL 651, AS AMENDED

SIGNED April 6, 1999

CHAPTER 193

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; PROVIDING FOR THE ISSUANCE OF GENERAL EDUCATIONAL DEVELOPMENT DIPLOMAS TO CERTAIN PERSONS.

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

Chapter 193 Section 1

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

"GENERAL EDUCATIONAL DEVELOPMENT CERTIFICATES.--The department of education shall issue a general educational development certificate to any candidate who is at least sixteen years of age and who has successfully completed the general educational development tests."

SENATE EDUCATION COMMITTEE SUBSTITUTE

FOR SENATE BILL 766

CHAPTER 194

RELATING TO HIGHWAYS; CREATING A DUAL DESIGNATION OF UNITED STATES ROUTE 66; REQUIRING THE IDENTIFICATION AND SURVEY OF STATE AND LOCAL SIGNS ALONG HISTORIC UNITED STATES ROUTE 66.

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

Chapter 194 Section 1

Section 1. HIGHWAYS--UNITED STATES ROUTE 66--DUAL DESIGNATION.--All remaining portions of former United States route 66 under state highway and transportation department jurisdiction that are currently used in New Mexico shall be designated as "New Mexico Route 66".

Chapter 194 Section 2

Section 2. TEMPORARY PROVISION--HIGHWAYS--UNITED STATES ROUTE 66--SIGNS.--The state highway and transportation department shall conduct an inventory of all current New Mexico state highway designation signs on former United States route 66 and add a second designation sign reading "New Mexico Route 66", contingent upon funding pursuant to the federal Transportation Equity Act for the 21st Century, the National Scenic Byways Program and other sources". The state highway and transportation department, working with the New Mexico route 66 association and the New Mexico route 66 scenic byway coordinator in the economic development department, shall add the secondary designation New Mexico Route 66" to all official maps of the state of New Mexico and shall complete its survey and addition of all signs prior to January 1, 2001 in celebration of the seventy-fifth anniversary of United States route 66.

HOUSE BILL 437, AS AMENDED

CHAPTER 195

RELATING TO CHILDREN; PROVIDING THAT CERTAIN RECORDS AND FILES BE KEPT CONFIDENTIAL ON APPEAL; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

Chapter 195 Section 1

Section 1. Section 32A-1-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 26, as amended by Laws 1995, Chapter 22, Section 1 and also by Laws 1995, Chapter 206, Section 8) is amended to read:

"32A-1-17. APPEALS.--

A. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the court. Absent an order of the appellate court, files and records that are required to be kept confidential and closed to the public, pursuant to any provision of the Children's Code shall be kept confidential and closed to the public on appeal.

B. The appeal to the court of appeals does not stay the judgment appealed from, but the court of appeals may order a stay upon application and hearing consistent with the provisions of the Children's Code if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. If the court of appeals does not dismiss the petition and order the child released, it shall affirm the court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the court for disposition consistent with the appellate court's decision on the appeal. Any party may appeal to the supreme court in the manner provided by law.

D. A child who has filed notice of appeal shall be furnished a transcript of the proceedings, or as much of it as is requested, without cost upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is financially unable to purchase the transcript.

E. Appeals from the court to the court of appeals shall proceed in accordance with time limits to be established by the supreme court.

F. Appeals from a tribal court order shall proceed pursuant to tribal law to an appropriate tribal court."

Chapter 195 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 453, AS AMENDED

CHAPTER 196

RELATING TO CHILDREN'S COURT PROCEEDINGS; CLARIFYING PROVISIONS REGARDING TRANSFER OF A PROCEEDING; AMENDING A SECTION OF THE CHILDREN'S CODE.

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

Chapter 196 Section 1

Section 1. Section 32A-1-9 NMSA 1978 (being Laws 1993, Chapter 77, Section 18) is amended to read:

"32A-1-9. VENUE AND TRANSFER.--

A. Proceedings in the court under the provisions of the Children's Code shall begin in the county where the child resides. If delinquency is alleged, the proceeding may also be begun in the county where the act constituting the alleged delinquent act occurred or in the county in which the child is detained. Neglect, abuse, family in need of court-ordered services or mental health proceedings may also begin in the county where the child is present when the proceeding is commenced.

B. The venue for proceedings under other laws will be determined by the venue provisions of the other laws. If the other laws contain no venue provisions, then the venue and transfer provisions of Subsections A and C of this section apply.

C. If a proceeding is begun in a court for a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition of the proceeding, may transfer the proceeding to the court for the county of the child's residence for such further proceedings as the receiving court deems proper. A like transfer may be made if the residence of the child changes during or after the proceeding. Certified copies of all legal and social records pertaining to the proceeding shall accompany the case on transfer.

D. In neglect, abuse, family in need of court-ordered services or adoption proceedings for the placement of an Indian child, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe upon the petition of the Indian child's parent, the Indian child's custodian or the Indian child's tribe. The transfer shall be barred if there is an objection to the transfer by a parent of the Indian child or the Indian child's tribe."

Chapter 196 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 651

CHAPTER 197

RELATING TO THE ENVIRONMENT; ENACTING THE NIGHT SKY PROTECTION ACT; PROVIDING A PENALTY.

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

Chapter 197 Section 1

Section 1. SHORT TITLE. -- This act may be cited as the "Night Sky Protection Act".

Chapter 197 Section 2

Section 2. PURPOSE.-- The purpose of the Night Sky Protection Act is to regulate outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy.

Chapter 197 Section 3

Section 3. DEFINITIONS. -- As used in the Night Sky Protection Act:

A. "outdoor lighting fixture" means an outdoor artificial illuminating device, whether permanent or portable, used for illumination or advertisement, including searchlights, spotlights and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, billboards or street lighting; and

B. "shielded" means a fixture that is shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

Chapter 197 Section 4

Section 4. SHIELDING OF OUTDOOR LIGHT FIXTURES. -- All outdoor lighting fixtures installed after January 1, 2000 shall be shielded, except incandescent fixtures of one hundred fifty watts or less and other sources of seventy watts or less.

Chapter 197 Section 5

Section 5. NONCONFORMING LIGHT FIXTURES.--

A. In addition to other exemptions provided in the Night Sky Protection Act, an outdoor lighting fixture not meeting these provisions shall be allowed, if the fixture is extinguished by an automatic shutoff device between the hours of 11:00 p.m. and sunrise.

B. No outdoor recreational facility, whether public or private, shall be illuminated after 11:00 p.m. except for a national or international tournament or to conclude any recreational or sporting event or other activity conducted, which is in progress prior to 11:00 p.m. at a ballpark, outdoor amphitheater, arena or similar facility.

Chapter 197 Section 6

Section 6. USE OF MERCURY VAPOR LIGHTING FIXTURES. -- No new mercury vapor outdoor lighting fixtures shall be sold or installed after January 1, 2000.

Chapter 197 Section 7

Section 7. EXEMPTIONS.--

A. The following are exempt from the requirements of the Night Sky Protection Act:

(1) outdoor lighting fixtures on advertisement signs on interstates and federal primary highways;

(2) outdoor lighting fixtures existing and legally installed prior to the effective date of the Night Sky Protection Act; however, when existing lighting fixtures become unrepairable, their replacements are subject to all the provisions of the Night Sky Protection Act;

(3) navigational lighting systems at airports and other lighting necessary for aircraft safety; and

(4) outdoor lighting fixtures that are necessary for worker safety at farms, ranches, dairies, feedlots or industrial, mining or oil and gas facilities.

B. The provisions of the Night Sky Protection Act are cumulative and supplemental and shall not apply within any county or municipality that, by ordinance or resolution, has adopted provisions restricting light pollution that are equal to or more stringent than the provisions of the Night Sky Protection Act.

Chapter 197 Section 8

Section 8. CONSTRUCTION INDUSTRIES DIVISION--

DUTIES. -- The construction industries division of the regulation and licensing department shall review the outdoor lighting provisions in the uniform building codes used in New Mexico and make recommendations for appropriate changes to comply with the provisions of the Night Sky Protection Act.

Chapter 197 Section 9

Section 9. COSTS OF REPLACEMENT--RECOVERY. -- If public utilities are required pursuant to the provisions of the Night Sky Protection Act or by local government ordinances to accelerate replacement of lighting fixtures, the cost of such replacement shall be included in rates approved by the public regulation commission.

Chapter 197 Section 10

Section 10. VIOLATIONS--PENALTY. -- Any person, firm or corporation violating the provisions of the Night Sky Protection Act shall be punished as follows:

A. for a first offense, the offender may be issued a warning; and

B. for a second offense or offense that continues for thirty days from the date of the warning, twenty-five dollars ($25.00) minus the replacement cost for each offending fixture.

HOUSE BILL 39, AS AMENDED

CHAPTER 198

RELATING TO PUBLIC FINANCE; AMENDING A SECTION OF THE NMSA 1978 PERTAINING TO EXEMPTIONS TO THE BATEMAN ACT.

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

Chapter 198 Section 1

Section 1. Section 6-6-12 NMSA 1978 (being Laws 1968, Chapter 72, Section 8, as amended) is amended to read:

"6-6-12. EXEMPTIONS FROM BATEMAN ACT.--Insurance contracts not exceeding five years, joint projects between two or more local public bodies not exceeding five years, lease-purchase agreements, lease agreements, contracts providing for the operation or provision and operation of a jail by or with another local public body or by an independent contractor entered into by a local public body set out in Section 6-6-11 NMSA 1978 and guaranteed energy savings contracts and installment payment contracts or lease-purchase agreements pursuant to guaranteed energy savings contracts are exempt from the provisions of Section 6-6-11 NMSA 1978, and such contracts, lease-purchase agreements, lease agreements and jail contracts are declared not to constitute the creation of debt."

HOUSE BILL 174

CHAPTER 199

RELATING TO REVENUE BONDS; AMENDING SECTIONS OF THE NMSA 1978 TO CLARIFY CERTAIN PROVISIONS RELATING TO MUNICIPAL AND COUNTY REVENUE BONDS; DECLARING AN EMERGENCY.

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

Chapter 199 Section 1

Section 1. Section 3-31-1 NMSA 1978 (being Laws 1973, Chapter 395, Section 3, as amended) is amended to read:

"3-31-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--In addition to any other law and constitutional home rule powers authorizing a municipality to issue revenue bonds, a municipality may issue revenue bonds pursuant to Chapter 3, Article 31 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 3, Article 31 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections A through I of this section.

A. Utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving a municipal utility or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the municipal utility or of any one or more of other such municipal utilities for payment of the interest on and principal of the revenue bonds. These bonds are sometimes referred to in Chapter 3, Article 31 NMSA 1978 as "utility revenue bonds" or "utility bonds".

B. Joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving joint water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of these municipal utilities for the payment of the interest on and principal of the bonds. These bonds are sometimes referred to in Chapter 3, Article 31 NMSA 1978 as "joint utility revenue bonds" or "joint utility bonds".

C. For the purposes of this subsection, "gross receipts tax revenue bonds" means gross receipts tax revenue bonds or sales tax revenue bonds. Gross receipts tax revenue bonds may be issued for any one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing;

(2) acquiring or improving municipal or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating fire-fighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or water utilities, including but not necessarily limited to the acquisition of rights of way and water and water rights, or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include but are not limited to the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way therefor;

(7) purchasing or otherwise acquiring or clearing land or for purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing;

(9) acquiring, constructing, extending, enlarging, bettering, repairing, otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing; and

(10) acquiring, constructing, extending, bettering, repairing or otherwise improving a public transit system or regional transit systems or facilities.

The municipality may pledge irrevocably any or all of the gross receipts tax revenue received by the municipality pursuant to Section 7-1-6.4 or 7-1-6.12 NMSA 1978 to the payment of the interest on and principal of the gross receipts tax revenue bonds for any of the purposes authorized in this section or for specific purposes or for any area of municipal government services, including but not limited to those specified in Subsection C of Section 7-19D-9 NMSA 1978, or for public purposes authorized by municipalities having constitutional home rule charters. A law that imposes or authorizes the imposition of a municipal gross receipts tax or that affects the municipal gross receipts tax, or a law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of such municipal gross receipts tax unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the municipality may appoint a commercial bank trust department to act as trustee of the gross receipts tax revenue and to administer the payment of principal of and interest on the bonds.

D. As used in this section, the term "public building" includes but is not limited to fire stations, police buildings, municipal jails, regional jails or juvenile detention facilities, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, city halls and garages for housing, repairing and maintaining city vehicles and equipment. As used in Chapter 3, Article 31 NMSA 1978, the term "gross receipts tax revenue bonds" means the bonds authorized in Subsection C of this section, and the term "gross receipts tax revenue" means the amount of money distributed to the municipality as authorized by Section 7-1-6.4 NMSA 1978 or the amount of money transferred to the municipality as authorized by Section 7-1-6.12 NMSA 1978 for any municipal gross receipts tax imposed pursuant to the Municipal Local Option Gross

Receipts Taxes Act. As used in Chapter 3, Article 31 NMSA 1978, the term "bond" means any obligation of a municipality issued under Chapter 3, Article 31 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a municipality to make payments.

E. Gasoline tax revenue bonds may be issued for laying off, opening, constructing, reconstructing, resurfacing, maintaining, acquiring rights of way, repairing and otherwise improving municipal buildings, alleys, streets, public roads and bridges or any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the gasoline tax revenue received by the municipality to the payment of the interest on and principal of the gasoline tax revenue bonds. As used in Chapter 3, Article 31 NMSA 1978, "gasoline tax revenue bonds" means the bonds authorized in this subsection, and "gasoline tax revenue" means all or portions of the amounts of tax revenues distributed to municipalities pursuant to Sections 7-1-6.9 and 7-1-6.27 NMSA 1978, as from time to time amended and supplemented.

F. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any revenue-producing project, including, where applicable, purchasing, otherwise acquiring or improving the ground therefor, including but not necessarily limited to acquiring and improving parking lots, or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project may not be pledged to the project revenue bonds issued for a revenue-producing project that clearly is unrelated in nature; but nothing in this subsection shall prevent the pledge to such project revenue bonds of any revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. A general determination by the governing body that any facilities or equipment is reasonably related to and constitutes a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 3, Article 31 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

G. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including where applicable purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The municipality may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in the Fire Protection Fund

Law and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of the bonds. The revenues of any fire district project shall not be pledged to the bonds issued for a fire district project that clearly is unrelated in its purpose; but nothing in this section prevents the pledge to such bonds of any revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. A general determination by the governing body of the municipality that any facilities or equipment is reasonably related to and constitutes a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district bonds.

H. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The municipality may pledge irrevocably any or all of the revenues received by the municipality from the law enforcement protection fund distributions pursuant to the Law Enforcement Protection Fund Act to the payment of the interest on and principal of the law enforcement protection revenue bonds.

I. Economic development gross receipts tax revenue bonds may be issued for the purpose of furthering economic development projects as defined in the Local Economic Development Act. The municipality may pledge irrevocably any or all of the revenue received from the municipal infrastructure gross receipts tax to the payment of the interest on and principal of the economic development gross receipts tax revenue bonds for any of the purposes authorized in this subsection. A law that imposes or authorizes the imposition of a municipal infrastructure gross receipts tax or that affects the municipal infrastructure gross receipts tax, or a law supplemental to or otherwise pertaining to the tax, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds that may be secured by a pledge of the municipal infrastructure gross receipts tax unless the outstanding revenue bonds have been discharged in full or provision has been fully made for their discharge. As used in Chapter 3, Article 31 NMSA 1978, "economic development gross receipts tax revenue bonds" means the bonds authorized in this subsection, and "municipal infrastructure gross receipts tax revenue" means any or all of the revenue from the municipal infrastructure gross receipts tax transferred to the municipality pursuant to Section 7-1-6.12 NMSA 1978.

J. Except for the purpose of refunding previous revenue bond issues, no municipality may sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 3-31-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue."

Chapter 199 Section 2

Section 2. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through K of this section

B. Gross receipts tax revenue bonds may be issued for one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving ground relating thereto, including but not necessarily limited to acquiring and improving parking lots, or any combination of the foregoing;

(2) acquiring or improving county or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating firefighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants, water utilities or other water, wastewater or related facilities, including but not limited to the acquisition of rights of way and water and water rights or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way;

(7) purchasing or otherwise acquiring or clearing land or purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing;

(9) acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing; or

(10) acquiring, constructing, extending, bettering, repairing or otherwise improving public transit systems or any regional transit systems or facilities.

A county may pledge irrevocably any or all of the revenue from the first one-eighth of one percent increment and the third one-eighth of one percent increment of the county gross receipts tax and the county infrastructure gross receipts tax for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds for any of the purposes authorized in this section or specific purposes or for any area of county government services. If the revenue from the first one-eighth of one percent increment or the third one-eighth of one percent increment of the county gross receipts tax or the county infrastructure gross receipts tax is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received from that increment of the county gross receipts tax or the county infrastructure gross receipts tax to be deposited into a special bond fund for payment of the principal, interest and expenses. At the end of each fiscal year, money remaining in the special bond fund after the annual obligations for the bonds are fully met may be transferred to any other fund of the county.

Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the county may appoint a commercial bank trust department to act as trustee of the proceeds of the tax and to administer the payment of principal of and interest on the bonds.

C. Fire protection revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any independent fire district project or facilities, including where applicable purchasing, otherwise acquiring or improving the ground for the project, or any combination of such purposes. A county may pledge irrevocably any or all of the county fire protection excise tax revenue for payment of principal and interest due in connection with, and other expenses related to, fire protection revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "fire protection revenue bonds".

D. Environmental revenue bonds may be issued for the acquisition and construction of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities. A county may pledge irrevocably any or all of the county environmental

services gross receipts tax revenue for payment of principal and interest due in connection with, and other expenses related to, environmental revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "environmental revenue bonds".

E. Gasoline tax revenue bonds may be issued for the acquisition of rights of way for and the construction, reconstruction, resurfacing, maintenance, repair or other improvement of county roads and bridges. A county may pledge irrevocably any or all of the county gasoline tax revenue for payment of principal and interest due in connection with, and other expenses related to, county gasoline tax revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "gasoline tax revenue bonds".

F. Utility revenue bonds or joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. A county may pledge irrevocably any or all of the net revenues from the operation of the utility or joint utility for which the particular utility or joint utility bonds are issued to the payment of principal and interest due in connection with, and other expenses related to, utility or joint utility revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "utility revenue bonds" or "joint utility revenue bonds".

G. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including as applicable purchasing, otherwise acquiring or improving the ground therefor and including but not limited to acquiring and improving parking lots, or may be issued for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project may not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of the revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. A general determination by the governing body that facilities or equipment is reasonably related to and constitute a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 4, Article 62 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

H. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating any fire district project, including where applicable purchasing, otherwise acquiring or improving the ground therefor, or for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in the Fire Protection Fund Law and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of the bonds. The revenues of a fire district project shall not be pledged to the bonds issued for a fire district project that clearly is unrelated in its purpose; but nothing in this section prevents the pledge to such bonds of revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. A general determination by the governing body of the county that facilities or equipment is reasonably related to and constitute a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district bonds.

I. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The county may pledge irrevocably any or all of the revenues received by the county from the law enforcement protection fund distributions pursuant to the Law Enforcement Protection Fund Act to the payment of the interest on and principal of the law enforcement protection revenue bonds.

J. Hospital emergency gross receipts tax revenue bonds may be issued for acquisition, equipping, remodeling or improvement of a county hospital facility. A county may pledge irrevocably, to the payment of the interest on and principal of the hospital emergency gross receipts tax revenue bonds, any or all of the revenues received by the county from a county hospital emergency gross receipts tax imposed pursuant to Section 7-20E-12.1 NMSA 1978 and dedicated to payment of bonds or a loan for acquisition, equipping, remodeling or improvement of a county hospital facility.

K. Economic development gross receipts tax revenue bonds may be issued for the purpose of furthering economic development projects as defined in the Local Economic Development Act. A county may pledge irrevocably any or all of the county infrastructure gross receipts tax to the payment of the interest on and principal of the economic development gross receipts tax revenue bonds for any of the purposes authorized in this subsection.

L. Except for the purpose of refunding previous revenue bond issues, no county may sell revenue bonds payable from pledged revenue after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 4-62-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during

which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

M. No bonds may be issued by a county, other than an H class county, a class B county as defined in Section 4-36-8 NMSA 1978 or a class A county as described in Section 4-36-10 NMSA 1978, to acquire, equip, extend, enlarge, better, repair or construct a utility unless the utility is regulated by the public regulation commission pursuant to the Public Utility Act and the issuance of the bonds is approved by the commission. For purposes of Chapter 4, Article 62 NMSA 1978, a "utility" includes but is not limited to a water, wastewater, sewer, gas or electric utility or joint utility serving the public. H class counties shall obtain public regulation commission approvals required by Section 3-23-3 NMSA 1978.

N. Any law that imposes or authorizes the imposition of a county gross receipts tax, a county environmental services gross receipts tax, a county fire protection excise tax, a county infrastructure gross receipts tax, the gasoline tax or the county hospital emergency gross receipts tax, or that affects any of those taxes, shall not be repealed or amended in such a manner as to impair outstanding revenue bonds that are issued pursuant to Chapter 4, Article 62 NMSA 1978 and that may be secured by a pledge of those taxes unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

O. As used in this section:

(1) "county infrastructure gross receipts tax revenue" means the revenue from the county infrastructure gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(2) "county environmental services gross receipts tax revenue" means the revenue from the county environmental services gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(3) "county fire protection excise tax revenue" means the revenue from the county fire protection excise tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(4) "county gross receipts tax revenue" means the revenue attributable to the first one-eighth of one percent and the third one-eighth of one percent increments of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any distribution related to the first one-eighth of one percent made pursuant to Section 7-1-6.16 NMSA 1978;

(5) "gasoline tax revenue" means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978; and

(6) "public building" includes but is not limited to fire stations, police buildings, county or regional jails, county or regional juvenile detention facilities, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment.

P. As used in Chapter 4, Article 62 NMSA 1978, the term "bond" means any obligation of a county issued under Chapter 4, Article 62 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument evidencing an obligation of a county to make payments."

Chapter 199 Section 3

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

HOUSE BILL 245

SIGNED April 6, 1999

CHAPTER 200

RELATING TO TAXATION; CHANGING THE DUE DATE FOR THE WEIGHT DISTANCE TAX.

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

Chapter 200 Section 1

Section 1. Section 7-15A-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 365, as amended) is amended to read:

"7-15A-9. WEIGHT DISTANCE TAX--PAYMENT TO DEPARTMENT--RECORD-KEEPING REQUIREMENTS.--

A. Except as provided in Subsection B of this section, the weight distance tax shall be paid to the department by April 30 for the first quarterly period of January 1 through March 31, by July 31 for the second quarterly period of April 1 through June 30, by October 31 for the third quarterly period of July 1 through September 30 and by January 31 for the fourth quarterly period of October 1 through December 31 of each year.

B. Any registrant, owner or operator not liable for the special fuel tax whose total weight distance tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the tax on an annual basis. Any registrant, owner or operator liable for the special fuel tax whose total combined liability for the weight distance tax and the special fuel tax for the previous calendar year was less than five hundred dollars ($500)

may elect to pay the weight distance tax on an annual basis. Election shall be made by filing a written statement of such election with the department on or before April 1 of the first year in which the election is made. Upon filing the written election with the department, the total weight distance tax due for the current calendar year shall be paid to the department by January 31 of the following year. If, however, any registrant, owner or operator is or becomes delinquent in excess of thirty days in any payment of the weight distance tax, that person shall make all future payments according to the schedule of Subsection A of this section. If any person who has made an election under this subsection has a liability for total weight distance tax or total combined weight distance tax and special fuel tax, as applicable, of five hundred dollars ($500) or more for any calendar year, that person shall make the succeeding year's payments pursuant to Subsection A of this section.

C. Any registrant, owner or operator not liable for the special fuel tax who has not previously been liable for the weight distance tax and whose liability for the weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. Any registrant, owner or operator liable for the special fuel tax who has not previously been liable for the weight distance tax and whose total combined liability for the special fuel tax and weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. If, however, the total annual liability or combined liability, as applicable, is expected to be five hundred dollars ($500) or more, the registrant, owner or operator shall make payments pursuant to Subsection A of this section.

D. All registrants, owners or operators required to pay the weight distance tax shall preserve the records upon which the periodic payments required by Subsections A and B of this section are based for four years following the period for which a payment is made. Upon request of the department, the registrant, owner or operator shall make the records available to the department at the owner's office for audit as to accuracy of computations and payments. If the registrant, owner or operator keeps the records at any place outside this state, the department or the department's authorized agent may examine them at the place where they are kept. The department may make arrangements with agencies of other jurisdictions administering motor vehicle laws for joint audits of any such registrants, owners or operators."

Chapter 200 Section 2

Section 2. APPLICABILITY.--The provisions of this act are applicable to reporting periods beginning on or after January 1, 1999.

HOUSE BILL 246

CHAPTER 201

MAKING AN APPROPRIATION FOR DEVELOPMENT TRAINING PROGRAMS; DECLARING AN EMERGENCY.

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

Chapter 201 Section 1

Section 1. APPROPRIATIONS.--

A.The following amounts are appropriated from the general fund for expenditure in fiscal year 1999 and subsequent fiscal years:

(1) one hundred sixty thousand dollars ($160,000) to the economic development department to assist companies in rural areas in applying for and using in-plant training and other state development training resources; and

(2) six million dollars ($6,000,000) to the development training fund for a development training program providing classroom and in-plant training to furnish qualified manpower resources for certain new or expanding industries and businesses in the state. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

Chapter 201 Section 2

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

HOUSE BILL 269, AS AMENDED

SIGNED April 6, 1999

CHAPTER 202

RELATING TO CORRECTIONS; ELIMINATING SALARIES FOR THE PAROLE BOARD; INCREASING THE NUMBER OF MEMBERS; PROVIDING STAGGERED TERMS; PROVIDING FOR A DIRECTOR; AMENDING THE PAROLE BOARD ACT.

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

Chapter 202 Section 1

Section 1. Section 31-21-24 NMSA 1978 (being Laws 1975, Chapter 194, Section 3, as amended) is amended to read:

"31-21-24. PAROLEBOARD--MEMBERS--APPOINTMENT--TERMS--QUALIFICATIONS--COMPENSATION-- ORGANIZATION.--

A. There is created the "parole board" consisting of nine members appointed by the governor with the consent of the senate.

B. The terms of the members of the parole board shall be six years. To provide for staggered terms, three of the initially appointed members, including the chairman, shall be appointed for terms of six years, three members for terms of four years and three members for terms of two years. Thereafter, all members shall be appointed for six-year terms.

C. Members of the parole board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Members of the parole board shall be persons qualified by such academic training or professional experience as is deemed necessary to render them fit to serve as members of the board. No member of the board shall be an official or employee of any other federal, state or local government entity.

E. Members of the parole board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. The governor shall designate one member of the parole board to serve as chairman, who in addition to other duties shall coordinate with the corrections department in the furnishing of services pursuant to Section 9-3-11 NMSA 1978.

G. A parole may be granted, denied or revoked by a quorum of two on a panel consisting of three parole board members appointed on a rotating basis by the chairman of the board."

Chapter 202 Section 2

Section 2. Section 31-21-23 NMSA 1978 (being Laws 1975, Chapter 194, Section 2) is amended to read:

"31-21-23. PURPOSE.--The purpose of the Parole Board Act is to create a professional parole board.

Chapter 202 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 315, AS AMENDED

CHAPTER 203

RELATING TO THE ENVIRONMENT; AMENDING AND REPEALING CERTAIN SECTIONS OF THE ENVIRONMENTAL IMPROVEMENT ACT TO INCLUDE CAPACITY DEVELOPMENT AND ADMINISTRATIVE PENALTY AUTHORITY FOR DRINKING WATER SYSTEMS; ABOLISHING THE WATER SUPPLY FUND; DECLARING AN EMERGENCY.

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

Chapter 203 Section 1

Section 1. Section 74-1-7 NMSA 1978 (being Laws 1971, Chapter 277, Section 10, as amended) is amended to read:

"74-1-7. DEPARTMENT--DUTIES.--

A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce regulations and standards in the following areas:

(1) food protection;

(2) water supply, including implementing a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and establishing administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats."

Chapter 203 Section 2

Section 2. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended) is amended to read:

"74-1-8. BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate regulations and standards in the following areas:

(1) food protection;

(2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and regulations authorizing imposition of administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Administrative penalties collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water conservation fund."

Chapter 203 Section 3

Section 3. Section 74-1-10 NMSA 1978 (being Laws 1973, Chapter 340, Section 8, as amended) is amended to read:

"74-1-10. PENALTY.--

A. A person who violates any regulation of the board is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the secretary determines that a person has violated, is violating or threatens to violate any provision of Paragraph (2) or (3) of Subsection A of Section 74-1-8 NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring compliance immediately or within a specified time period and assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department. Any penalty assessed in the order, except for residential on-site liquid waste systems, shall not exceed one thousand dollars ($1,000) for each violation. Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one hundred dollars ($100) for each violation. A penalty imposed for violation of drinking water regulations 20 NMAC 7.1 or permit conditions shall not exceed one thousand dollars ($1,000) per violation per day. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. If a violator fails to take corrective actions within the time specified in the compliance order, the secretary shall:

(1) assess civil penalties of not more than one thousand dollars ($1,000) for each noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978.

E. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a hearing. Upon such a request, the secretary shall conduct a hearing. The secretary shall appoint an independent hearing officer to preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

F. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt and promulgate rules for discovery procedures.

G. Penalties collected pursuant to violations of rules, regulations or permit conditions adopted pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to be credited to the general fund.

H. Penalties collected pursuant to violations of drinking water regulations 20 NMAC 7.1 or permit conditions pursuant to Paragraph (2) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to the credit of the water conservation fund."

Chapter 203 Section 4

Section 4. Section 74-1-12 NMSA 1978 (being Laws 1993, Chapter 317, Section 1) is amended to read:

"74-1-12. COMPLIANCE WITH THE FEDERAL SAFE DRINKING WATER ACT--PURPOSE.--The purpose of this section and Section 74-1-13 NMSA 1978 is to provide:

A. an incentive for conservation of water, the state's most precious resource; and

B. funding for certain locations in the state to comply with the federal Safe Drinking Water Act in which the United States congress mandated that the United States environmental protection agency establish drinking water standards for contaminants, require filtration and disinfection for all public water supply systems, increase enforcement authority, establish public notification requirements, implement a lead ban and implement a capacity development program for existing and newly created water systems."

Chapter 203 Section 5

Section 5. TEMPORARY PROVISION.--On the effective date of this act, the balance in the water supply fund is transferred to the water conservation fund.

Chapter 203 Section 6

Section 6. REPEAL. Section 74-1-8.3 NMSA 1978 (being Laws 1993, Chapter 100, Section 6) is repealed.

Chapter 203 Section 7

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

HOUSE BILL 390, AS AMENDED

SIGNED April 6, 1999

CHAPTER 204

RELATING TO MUNICIPALITIES; AMENDING THE BUSINESS IMPROVEMENT DISTRICT ACT TO INCLUDE BUSINESS OWNERS; DECLARING AN EMERGENCY.

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

Chapter 204 Section 1

Section 1. Section 3-63-2 NMSA 1978 (being Laws 1988, Chapter 32, Section 2) is amended to read:

"3-63-2. PURPOSE OF ACT.--The purpose of the Business Improvement District Act is to:

A. promote and restore the economic vitality of areas within municipalities by allowing the establishment of business improvement districts with the powers to provide for the administration and financing of additional and extended services to businesses within business improvement districts;

B. finance local improvements within those districts; and

C. provide municipalities and entrepreneurs a more flexible and proactive vehicle to collaborate in the revitalization efforts of their downtowns, commercial districts and central business districts."

Chapter 204 Section 2

Section 2. Section 3-63-5 NMSA 1978 (being Laws 1988, Chapter 32, Section 5) is amended to read:

"3-63-5. DISTRICT--AUTHORITY--CREATION.--

A. A district shall assess a business improvement benefit fee on any real property or business located within the district.

B. A district shall include any real property or business that benefits by the improvements set out in the business improvement district plan and that is located within the district's geographic boundaries.

C. The district benefit fee assessment schedule shall not include:

(1) governmentally owned real property;

(2) residential real property; or

(3) real property owned by a nonprofit corporation.

D. A district may be created by petition of real property owners or by petition of business owners in a proposed district after notice and public hearing."

Chapter 204 Section 3

Section 3. Section 3-63-6 NMSA 1978 (being Laws 1988, Chapter 32, Section 6) is amended to read:

"3-63-6. CREATION BY PETITION.--

A. Whenever ten or more business owners comprising at least fifty-one percent of the total business owners in the proposed district or whenever five or more real property owners comprising at least fifty-one percent of the total real property owners in the proposed district, exclusive of any real property owned by the United States or the state or any of its political subdivisions, petition the council in writing to create a district, the council shall refer the petition to a planning group to prepare a plan pursuant to the provisions of the Business Improvement District Act to implement the creation of the district. The plans shall:

(1) state the purpose for the creation of the district;

(2) describe in general terms the real property to be included in the district;

(3) provide an assessment plat of the area to be included in the district showing an estimate of the benefits to such real property and an amount estimated to be assessed against each parcel of real property;

(4) provide such other information as the council deems necessary for the proper evaluation of the plan;

(5) in the case of a petition brought by a majority of business owners within a proposed district, describe in general terms both the real property and the businesses included in the district; and

(6) in the case of a petition brought by a majority of business owners within a proposed district, provide a formula to be used to assess businesses in the district for the business improvement benefit fee to be collected along with the municipal property tax.

B. After the completion of the plan, the planning group shall have the municipal clerk give notice of a hearing on the proposed plan.

C. If after the hearing the planning group recommends to the council the creation of the district as proposed or amended, the council may adopt by ordinance the proposed district requested by petition and as described by the plan."

Chapter 204 Section 4

Section 4. Section 3-63-7 NMSA 1978 (being Laws 1988, Chapter 32, Section 7) is amended to read:

"3-63-7. ORDINANCE CREATING THE DISTRICT.--The ordinance to create a district shall include:

A. a list of improvements to be provided by the district;

B. the amount of benefit estimated to be conferred on each tract or parcel of real property;

C. a description of the real property or businesses to be assessed a business improvement benefit fee;

D. the assessment method to be used to finance the improvements of the district;

E. the amount of the assessment to be imposed on each real property owner; and

F. the terms of members, method of appointment and duties of the management committee for the district."

Chapter 204 Section 5

Section 5. Section 3-63-10 NMSA 1978 (being Laws 1988, Chapter 32, Section 10) is amended to read:

"3-63-10. NOTICE AND HEARING.--

A. The notice of public hearing required by the Business Improvement District Act shall contain:

(1) the time and place where the planning committee will hold a hearing on the proposed district and improvements;

(2) the estimated cost of improvements;

(3) the boundary of the district; and

(4) the recommended formula or the preliminary estimate of assessment of a business improvement benefit fee against each tract or parcel of real property or business.

B. The notice of the public hearing shall be mailed to the affected real property owners or business owners in the proposed district at least thirty days prior to the date of the hearing. In addition, notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality in which the proposed district lies. The last publication shall be at least three days before the date of the hearing.

C. Any citizen, business owner or real property owner affected by the proposed district shall be given opportunity to appear at the public hearing and present his views on the creation of the district as outlined in the preliminary plan.

D. Upon completion of the hearing, the planning group shall present its recommendation on the creation of the proposed district. If the recommendation is against the creation of the district, the council may not adopt an ordinance creating the district."

Chapter 204 Section 6

Section 6. Section 3-63-11 NMSA 1978 (being Laws 1988, Chapter 32, Section 11) is amended to read:

"3-63-11. MANAGEMENT COMMITTEE--CREATION--DUTIES.--

A. The council, upon adoption of an ordinance creating a district, shall appoint a management committee that shall be responsible for the operation of the district in one of the following manners:

(1) the council shall appoint an existing downtown, community or central business district revitalization nonprofit corporation that operates within the boundaries of the district, to administer and implement the business improvement district plan; or

(2) the council shall appoint a management committee to administer and implement the business improvement district plan from nominees submitted by the owners of businesses and the owners of real property located in the district.

B. The management committee shall prepare and file annually with the council for its review and approval a budget and progress report for the district.

C. The management committee shall administer all improvements within the district.

D. The management committee shall recommend the annual assessment to be made by the council.

E. The management committee shall file annually with the council a report of the district activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of the fiscal year and the benefits of the district's program to the real property and business owners of the district.

F. The management committee shall be a nonprofit corporation created pursuant to the Nonprofit Corporation Act."

Chapter 204 Section 7

Section 7. Section 3-63-13 NMSA 1978 (being Laws 1988, Chapter 32, Section 13) is amended to read:

"3-63-13. ANNUAL ASSESSMENT--SPECIAL ACCOUNT.--

A. The council, upon recommendation of the management committee, may annually assess a business improvement benefit fee as defined by the ordinance upon all real property owners and business owners, exclusive of any real property owned by the United States or the state or any of its political subdivisions located within the district. The council may make reasonable classifications regarding real property owners located within the district. The annual assessment may be based on the amount of space used for business purposes, street front footage, building or land square footage or such other factors or combination of factors as shall be deemed reasonable. The annual assessment shall be in addition to any other incorporated municipal-imposed license fees or other taxes, fees or other charges assessed or levied for the general benefit and use of the incorporated municipality.

B. All money received by the municipality from the district assessment shall be held in a special account for the benefit of the district.

C. In the case of a district that was created by a majority of real property owners, the amount owed by a commercial tenant shall be proportional to the square footage of space that the tenant rents but shall not be more than seventy-five percent of the total business improvement benefit fee assessed on the property. The property owner shall pay at least twenty-five percent of the business improvement benefit fee.

D. In the case of a district that was created by a majority of businesses, the business improvement benefit fee shall be collected at the same time that the real property owner's property taxes are collected. Businesses shall be assessed for one hundred percent of the business fee assessed to the property."

Chapter 204 Section 8

Section 8. REPEAL.--Section 3-63-8 NMSA 1978 (being Laws 1988, Chapter 32, Section 8) is repealed.

Chapter 204 Section 9

Section 9. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 450, AS AMENDED

SIGNED April 6, 1999

CHAPTER 205

RELATING TO TAXATION; ENACTING A SECTION OF THE INCOME TAX ACT TO PROVIDE A DEDUCTION FOR CERTAIN CAPITAL GAIN INCOME.

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

Chapter 205 Section 1

Section 1. A new section of the Income Tax Act is enacted to read:

"DEDUCTION--NET CAPITAL GAIN INCOME.--

A. Except as provided in Subsection B of this section, a taxpayer may claim a deduction from net income in an amount equal to the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed one thousand dollars ($1,000). A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on the joint return.

B. A taxpayer may not claim the deduction provided in Subsection A of this section if the taxpayer has claimed the credit provided in Section 7-2D-8.1 NMSA 1978.

C. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code."

Chapter 205 Section 2

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1999.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 486

CHAPTER 206

RELATING TO MEDICAL RECORDS; PROVIDING A PROCEDURE FOR APPLICANTS FOR DISABILITY BENEFITS TO OBTAIN COPIES OF RECORDS WITHIN THIRTY DAYS AFTER A REQUEST; PROVIDING THAT A FEE SCHEDULE SHALL BE ESTABLISHED FOR PROVIDING THE COPIES OF MEDICAL RECORDS; PROVIDING CIVIL PENALTIES FOR VIOLATIONS.

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

Chapter 206 Section 1

Section 1. ACCESS TO MEDICAL RECORDS BY APPLICANTS FOR DISABILITY BENEFITS--VIOLATIONS.--

A. Within thirty days of receiving a request from a patient or former patient who is applying for benefits based on social security disability or who is appealing a denial of such benefits or from an authorized representative of such a patient or former patient, a health care provider shall furnish the requestor with a copy of that patient's medical records. A fee as established by the department of health, may be charged by the health care provider to the requestor for the copies or for the service in obtaining the records.

B. A request made pursuant to Subsection A of this section shall include a statement or document from the agency that administers the benefits that confirms the application or appeal.

C. As used in this section:

(1) "health care provider" means a person who is licensed, certified or otherwise authorized by law to provide or render health care in the ordinary course of business or practice of a profession and includes a facility employing, or contracting with, such a person; and

(2) "medical records" means information in a medical or mental health patient file, including drug or alcohol treatment records, medical reports, clinical notes, nurses' notes, history of injury, subjective and objective complaints, test contents and results, interpretations of tests, reports and summaries of interpretations of tests and other reports, diagnoses and prognoses, bills, invoices, referral requests, consultative reports and reports of services requested by the health care provider.

D. Nothing in this section shall be interpreted to grant access for a patient or patient's representative to medical records that are otherwise protected by law.

E. The department of health shall enforce the provisions of this section and may impose a civil penalty in an amount not to exceed one hundred dollars ($100) for a violation of this section. The department may promulgate rules necessary for the implementation and enforcement of the provisions of this section, including a fee schedule by obtaining records as provided in Subsection A of this section for a patient who has a financial ability to pay.

HOUSE BILL 497, AS AMENDED

CHAPTER 207

RELATING TO PUBLIC FINANCE; CREATING THE TOBACCO SETTLEMENT PERMANENT FUND AND THE TOBACCO SETTLEMENT INCOME FUND; AUTHORIZING EXPENDITURE FOR HEALTH AND EDUCATIONAL PURPOSES; CREATING A JOINT INTERIM LEGISLATIVE COMMITTEE; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 207 Section 1

Section 1. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT.--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 from a qualified escrow fund authorized by a qualifying state statute 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. Money in the fund shall not be expended for any purpose except by appropriation of the second session of the forty-fourth and subsequent legislatures.

Chapter 207 Section 2

Section 2. TOBACCO SETTLEMENT INCOME FUND CREATED-- PURPOSE.--

A. The "tobacco settlement income fund" is created in the state treasury and shall consist of appropriations made to the fund from the tobacco settlement permanent fund. Money in the fund may be appropriated by the legislature for any of the purposes specified in Subsection B of this section.

B. Money may be appropriated from the tobacco settlement income fund for health and educational purposes, including:

(1) support of additional public school programs, including extracurricular and after-school programs designed to involve students in athletic, academic, musical, cultural, civic, mentoring and similar types of activities;

(2) any health or health care program or service for prevention or treatment of disease or illness;

(3) basic and applied research conducted by higher educational institutions or state agencies addressing the impact of smoking or other behavior on health and disease;

(4) public health programs and needs; and

(5) tobacco use cessation and prevention programs, including public information, education and media campaigns.

Chapter 207 Section 3

Section 3. TOBACCO SETTLEMENT DISTRIBUTIONS TO STATE-- TRANSFER TO TOBACCO SETTLEMENT PERMANENT FUND.--The state treasurer shall deposit in

the tobacco settlement permanent fund all amounts 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 from a qualified escrow fund authorized by a qualifying state statute enacted pursuant to the master settlement agreement.

Chapter 207 Section 4

Section 4. TOBACCO SETTLEMENT COMMITTEE CREATED-- MEMBERSHIP-- DUTIES.--

A. The "tobacco settlement committee" is created as a joint interim legislative committee. The committee shall function from the date of its appointment until the first day of December prior to the second session of the forty-fourth legislature.

B. The tobacco settlement committee shall consist of six members. The New Mexico legislative council shall appoint three members from the house of representatives and three members from the senate and shall designate the chairman and vice chairman of the committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects the action.

C. After its appointment, the tobacco settlement committee shall hold one organizational meeting to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the work plan and budget, the committee shall:

(1) examine the tobacco settlement agreement and any related changes in federal funding to determine the amount of money New Mexico is likely to receive pursuant to the settlement and the timing, the number and the proportion of the anticipated distributions;

(2) inventory, consider and take testimony on the various unmet health and education needs in New Mexico and determine or devise a method for setting priorities among those unmet needs;

(3) study the impact of appropriating only the annual distributions from the tobacco settlement permanent fund, as provided by law, and determine whether any changes should be made in the law regarding the funds or the distribution mechanism;

(4) develop a formula or guidelines for determining which purposes, programs or activities will be funded annually from tobacco settlement receipts; and

(5) review any other statutes, constitutional provisions, regulations and court decisions relevant to the use of tobacco settlement funds.

D. Subcommittees shall be created only by majority vote of all members appointed to the tobacco settlement committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of the meeting or expenditure, and the approval shall be shown in the minutes of the committee.

E. The tobacco settlement committee shall report its findings and recommendations, including proposed legislation, for the consideration of the second session of the forty-fourth legislature. The report and proposed legislation shall be submitted to the New Mexico legislative council on or before December 15, 1999.

F. The staff for the tobacco settlement committee shall be provided by the legislative council service.

Chapter 207 Section 5

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

HOUSE BILL 501, AS AMENDED

SIGNED April 6, 1999

CHAPTER 208

RELATING TO TOBACCO; ENACTING MODEL STATUTE REGARDING TOBACCO PRODUCT MANUFACTURERS.

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

Chapter 208 Section 1

Section 1. DEFINITIONS.--As used in this act:

A. "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement;

B. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and

the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons;

C. "allocable share" means Allocable Share as that term is defined in the master settlement agreement;

D. "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette";

E. "master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

F. "qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars ($1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with Subsection B of Section 2 of this act;

G. "released claims" means Released Claims as that term is defined in the master settlement agreement;

H. "releasing parties" means Releasing Parties as that term is defined in the master settlement agreement;

I. "tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the

payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in Paragraph (1) or (2) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within Paragraph (1), (2) or (3) of this subsection; and

J. "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The secretary of taxation and revenue shall promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Chapter 208 Section 2

Section 2. REQUIREMENTS.--

A. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the master settlement agreement) and generally perform its financial obligations under the master settlement agreement; or

(2) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

(a) 1999: $.0094241 per unit sold after the date of enactment of this act;

(b) 2000: $.0104712 per unit sold;

(c) for each of 2001 and 2002: $.0136125 per unit sold;

(d) for each of 2003 through 2006: $.0167539 per unit sold; and

(e) for each of 2007 and each year thereafter: $.0188482 per unit sold.

B. A tobacco product manufacturer that places funds into escrow pursuant to Paragraph (2) of Subsection A of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this paragraph:

(a) in the order in which they were placed into escrow and

(b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(3) to the extent not released from escrow under Paragraphs (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

C. Each tobacco product manufacturer that elects to place funds into escrow pursuant to Paragraph (2) of Subsection A of this section shall annually certify to the attorney general that it is in compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under Paragraph (2) of Subsection A of this section and Subsection B of this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under Paragraph (2) of Subsection A of this section and Subsection B of this section shall:

(1) be required within fifteen days to place such funds into escrow as shall bring it into compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The court, upon a finding of a violation of Paragraph (2) of Subsection A of this section or Subsection B of this section, may impose a civil penalty to be paid to the

state general fund in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(2) in the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring it into compliance with Paragraph (2) of Subsection A of this section and Subsection B of this section. The court, upon a finding of a knowing violation of Paragraph (2) of Subsection A of this section or Subsection B of this section, may impose a civil penalty to be paid to the state general fund in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and

(3) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under Paragraph (2) of Subsection A of this section shall constitute a separate violation.

HOUSE BILL 611, AS AMENDED

CHAPTER 209

AMENDING LAWS 1998 (1ST S.S.), CHAPTER 12, SECTION 1 TO REMOVE THE REQUIREMENT THAT THE ADULT BASIC EDUCATION MATCH BE USED AS MATCH FOR THE FEDERAL WELFARE-TO-WORK GRANT; DECLARING AN EMERGENCY.

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

Chapter 209 Section 1

Section 1. Laws 1998 (1st S.S.), Chapter 12, Section 1 is amended to read:

"Section 1. Laws 1998, Chapter 116, Section 6 is amended to read:

"Section 6. ADDITIONAL NEW MEXICO WORKS ACT AND WELFARE-TO-WORK APPROPRIATIONS.--The following amounts are appropriated from the funds as indicated for the purposes specified. Unless otherwise indicated, the appropriations are for expenditure in fiscal year 1999. Any unexpended or unencumbered balances of the general fund appropriation remaining at the end of fiscal year 1999 shall revert to the general fund.

A. Five million dollars ($5,000,000) is appropriated from the general fund to the children, youth and families department to expand the headstart program to serve participants as

defined in the New Mexico Works Act. Expenditure of any of the appropriation is contingent upon certification by the secretary of human services to the secretary of finance and administration that the children, youth and families department has entered into an agreement with the human services department that provides for appropriate administrative and accounting procedures and oversight by the human services department to ensure that expenditures will meet all federal and state requirements for maintenance of effort; and monthly reports of all expenditures by the children, youth and families department to the department of finance and administration, the welfare reform oversight committee and the legislative finance committee. The appropriation shall not be expended for the purpose of matching federal funds or for any other purpose that may jeopardize its classification as maintenance of effort. The appropriation shall be reported by the human services department as maintenance of effort and included in the state plan for the temporary assistance for needy families block grant.

B. Two hundred thousand dollars ($200,000) is appropriated from the general fund to the human services department to develop programs in cooperation with the Martin Luther King, Jr. commission to provide services for participants as defined in the New Mexico Works Act. The programs developed shall maintain a work-first concept, contain measurable performance standards, identify the number of target clients and provide a tracking and reporting element. The appropriation shall not be expended for any purpose that may jeopardize its classification as maintenance of effort. The human services department shall ensure that expenditures meet all federal and state requirements for maintenance of effort. The appropriation shall be reported by the human services department as maintenance of effort. The human services department shall report quarterly to the welfare reform oversight committee on the programs developed.

C. Five hundred thousand dollars ($500,000) is appropriated from the general fund to the commission on the status of women to develop, establish and operate job placement programs for participants as defined in the New Mexico Works Act that are referred to the commission by the department. In developing, establishing and operating these job placement programs, the commission shall cooperate and coordinate with the human services department. Prior to the expenditure of any of the appropriation, the commission shall seek the approval of each program it develops from the department. Expenditure of any of the appropriation is contingent upon certification by the secretary of human services to the department of finance and administration that the commission has entered into an agreement with the human services department that provides for programs that maintain a work-first concept; programs that contain measurable performance standards; programs that identify the number of target clients; programs that provide a tracking and reporting element; and appropriate administrative and accounting procedures and oversight by the human services department to ensure that expenditures shall meet all federal and state requirements for maintenance of effort, including adherence to the cap on administrative costs. Additionally, the commission shall provide quarterly reports of all its expenditures to the human services department, the welfare reform oversight committee and the legislative finance committee. The appropriation shall not be expended for any purpose that may jeopardize its

classification as maintenance of effort. The appropriation shall be reported by the human services department as maintenance of effort.

D. Five hundred thousand dollars ($500,000) is appropriated from the general fund to the regents of western New Mexico university to provide job training and placement for participants as defined in the New Mexico Works Act that are referred to western New Mexico university by the department. In providing job training and placement for participants, western New Mexico university shall coordinate and cooperate with the human services department. Prior to the expenditure of any of the appropriation, western New Mexico university shall seek the approval of each program it develops from the human services department. Expenditure of any of the appropriation is contingent upon certification by the secretary of human services to the department of finance and administration that western New Mexico university has entered into an agreement with the human services department that provides for programs that maintain a work-first concept; programs that contain measurable performance standards; programs that identify the number of target clients; programs that provide a tracking and reporting element; and appropriate administrative and accounting procedures and oversight by the human services department to ensure that expenditures shall meet all federal and state requirements for maintenance of effort, including adherence to the cap on administrative costs. Additionally, western New Mexico university shall provide quarterly reports of all the expenditures in these job training and placement programs to the human services department, the welfare reform oversight committee and the legislative finance committee. The appropriation shall not be expended for any purpose that may jeopardize its classification as maintenance of effort. The appropriation shall be reported by the human services department as maintenance of effort. An additional three hundred fifty thousand dollars ($350,000) is appropriated from the general fund to the regents of western New Mexico university to continue the child development center.

E. One million dollars ($1,000,000) is appropriated from the general fund to the department of health to provide a one-time expenditure for substance abuse counseling for participants as defined pursuant to the New Mexico Works Act. The appropriation shall be reported by the labor department as a match for the federal welfare-to-work grant. Expenditure of any of the appropriation is contingent upon certification by the secretary of labor to the secretary of finance and administration that the department of health has entered into an agreement with the labor department that provides for appropriate administrative and accounting procedures and oversight by the labor department to ensure that the expenditure meets all federal and state requirements for the match for the federal welfare-to-work grant. The appropriation shall not be expended for any purpose that may jeopardize its classification as match for the federal welfare-to-work grant.

F. Two million dollars ($2,000,000) is appropriated from the general fund to the human services department to provide job training and placement services to participants as defined in the New Mexico Works Act that include programs that maintain a work-first concept; programs that contain measurable performance standards; programs that

identify the number of target clients; and programs that provide a tracking and reporting element. The appropriation shall not be expended for any purpose that may jeopardize its classification as maintenance of effort. The human services department shall ensure that expenditures meet all federal and state requirements for maintenance of effort. The appropriation shall be reported by the human services department as maintenance of effort.

G. Two million four hundred eighty-two thousand five hundred dollars ($2,482,500) is appropriated from the general fund to the human services department to develop early childhood-family support and education training programs with the state department of public education to provide before- and after-school programs to students who are ages five through eight who are participants as defined in the New Mexico Works Act. The human services department shall also develop job skills and leadership development programs for the parents who are participants as defined in the New Mexico Works Act. The human services department shall make referrals of eligible families. The early childhood-family support and education training programs shall be directed to areas lacking certified child-care services as determined by the children, youth and families department. The programs developed shall contain measurable performance standards, identify the number of target clients and provide a tracking and reporting element. The appropriation shall not be expended for any purpose that may jeopardize its classification as maintenance of effort. The human services department shall ensure that expenditures meet all federal and state requirements for maintenance of effort. The appropriation shall be reported by the human services department as maintenance of effort. The human services department shall report to the welfare reform oversight committee on the programs developed.

H. Five hundred thousand dollars ($500,000) is appropriated from the general fund to the department of health to provide a one-time expenditure for substance abuse counseling for Native Americans who are participants as defined in the New Mexico Works Act. The appropriation shall be reported by the labor department as a match for the federal welfare-to-work grant. Expenditure of any of the appropriation is contingent upon certification by the secretary of labor to the secretary of finance and administration that the department of health has entered into an agreement with the labor department that provides for appropriate administrative and accounting procedures and oversight by the labor department to ensure that the expenditure meets all federal and state requirements for the match for the federal welfare-to-work grant. The appropriation shall not be expended for any purpose that may jeopardize its classification as match for the federal welfare-to-work grant.

I. Thirteen million eight hundred thirty-eight thousand dollars ($13,838,000) is appropriated from the temporary assistance for needy families block grant to the human services department for training participants to become licensed daycare providers and for other services as defined in the New Mexico Works Act.

J. Of the general fund appropriations made to the human services department in Section 4 of the General Appropriation Act of 1998, the human services department

shall report six hundred thousand dollars ($600,000) in the department's child support enforcement division for child support enforcement pass-throughs to participants as defined in the New Mexico Works Act as maintenance of effort for the temporary assistance for needy families block grant.

K. Of the general fund appropriation made to children, youth and families department in Section 4 of the General Appropriation Act of 1998 for the child care development block grant in the children, youth and families department, up to two million eight hundred thousand dollars ($2,800,000) and not less than two million dollars ($2,000,000) shall be counted as maintenance of effort for the temporary assistance for needy families block grant.

L. The human services department shall report any amount of general assistance payments made to lawfully admitted immigrant families as maintenance of effort and include the payments in the state plan for the temporary assistance for needy families block grant.

M. Four million dollars ($4,000,000) is appropriated from the general fund operating reserve to the department of finance and administration. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund operating reserve. The appropriation, or so much thereof as is necessary, shall be distributed to the human services department for the purpose of meeting the state and federal requirements for maintenance of effort. No distribution shall be made until the distribution has been approved by the secretary of finance and administration.

N. Upon certification by the secretary of human services that a budget adjustment is essential to meet the state and federal maintenance of effort and the purpose of the budget adjustment is not contrary to legislative intent, the human services department may request a budget adjustment as necessary to ensure that all federal and state requirements for maintenance of effort are met. The department of finance and administration shall certify that the request meets the conditions specified in this subsection before approving the request. The procedures delineated in Section 6-3-25 NMSA 1978 shall be followed in approving a request."."

Chapter 209 Section 2

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

HOUSE BILL 612

SIGNED April 6, 1999

CHAPTER 210

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL CODE TO REQUIRE THAT SCHOOL DISTRICTS ADMINISTER NORM-REFERENCED TESTS OR STANDARDS-BASED ASSESSMENTS; PROVIDING FOR THE REPORTING OF RESULTS.

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

Chapter 210 Section 1

Section 1. Section 22-1-6 NMSA 1978 (being Laws 1989, Chapter 308, Section 1, as amended by Laws 1997, Chapter 261, Section 1) is amended to read:

"22-1-6. ANNUAL SCHOOL DISTRICT ACCOUNTABILITY REPORT REQUIRED.--

A. School districts shall be required to publish an annual school district accountability report to provide district-wide data for the previous school year. The state board shall establish the format for the accountability reports and ensure that the relevant data is provided annually to parents, students, educators, policymakers, legislators, the governor and business and economic development organizations. The department of education shall establish the following five indices through which public school performance shall be measured and reported to school districts:

(1) student achievement as measured by a nationally norm-referenced test approved by the department of education or through a performance-based instrument to measure proficiency;

(2) school safety;

(3) the dropout rate;

(4) attendance; and

(5) parent and community involvement.

The department of education shall establish the methodology for measuring each of the five indices.

B. Effective July 1, 1999, school districts shall annually administer a nationally norm-referenced test or a standards-based assessment to all students enrolled in a public school in grades three through nine. Only students with disabilities deemed incapable of taking the test as determined on their individual educational program shall be exempted from this requirement. Additionally, students who have been assessed as non-English or limited English proficient using state approved language assessments and meeting required thresholds shall be exempted from this test and provided an alternative norm-referenced or standards-based assessment in their primary language. School districts shall report the following to the department of education:

(1) the results of the norm-referenced test or standards-based assessment;

(2) the number of enrolled students who did not take the test, the school in which they are enrolled and the reason for the exemption from the test; and

(3) separately and as part of the aggregate report, the results of assessments of students enrolled in special education class A, B, C and D programs who took the test and the school in which they are enrolled, except in cases where the number of students being reported is less than ten.

C. School districts shall set two-, four- and six-year benchmarks in each of the five indices for each public school. Local school boards may establish additional indices, if reviewed by the department of education, through which to measure the school district's performance in other areas.

D. The annual accountability report shall also include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree" and shall include the optional response "don't know". The survey shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

(1) parent-teacher-school relationship and communication;

(2) quality of educational and extracurricular programs;

(3) instructional practices and techniques;

(4) resources;

(5) school personnel, including the school principal; and

(6) parents' view of teaching staff expectations for the students.

The state board shall develop no more than ten of the questions which shall be reviewed by the legislative education study committee prior to implementation. No more than five questions shall be developed by the local school board and no more than five questions shall be developed by the staffs of each individual school site, provided that at least half of those questions are developed by teachers rather than administrators, in order to gather information that is specific to the particular community surveyed. The questionnaires shall indicate the public school site and shall be tabulated by the

department of education within thirty days of receipt and shall be returned to the respective schools to be disseminated to all parents.

E. The annual accountability report for each school district shall be adopted by the local school board, may be published no later than November 15 of each year and may be published at least once each school year in a newspaper of general circulation in the county where the school district is located. In publication, the report shall be titled "the school district report card" and disseminated in accordance with guidelines established by the state board to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

F. The department of education shall create an accountability data system through which data from each public school and each school district may be compiled and reviewed. The department of education shall provide the resources to train school district personnel in the use of the accountability data system.

G. The department of education shall verify data submitted by the school districts.

H. The state board shall measure the performance of every public school in New Mexico. Public schools achieving the highest level of performance shall be eligible for supplemental incentive funding. The state board shall establish the corrective actions and interventions necessary for public schools whose performance level is low.

I. Appropriation is contingent upon inclusion of one million four hundred thirty three thousand dollars ($1,433,000) in the General Appropriation Act to meet the provisions of this act."

HOUSE BILL 624, AS AMENDED

CHAPTER 211

RELATING TO WINEGROWERS; PERMITTING INTRASTATE USE OF COMMON CARRIERS FOR TRANSPORTING SMALL AMOUNTS OF WINE; DECLARING AN EMERGENCY.

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

Chapter 211 Section 1

Section 1. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended) is amended to read:

"60-6A-11. WINEGROWER'S LICENSE.--

A. Exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is any person in

this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to regulations adopted by the director.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is manufactured or produced by or for the winegrower;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license or to a winegrower's agent;

(4) transport not more than one hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine;

(6) sell wines in other states or foreign jurisdictions to the holders of any license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine;

(7) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(8) conduct wine tastings and sell, by the glass or by the bottle or sell in unbroken packages for consumption off the premises but not for resale wine of his own production on the winegrower's premises;

(9) at no more than three off-premises locations, conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department regulations for new liquor license locations;

(10) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act;

(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; and

(12) apply to the department for a permit to join with other licensed winegrowers to sell wine produced by or for winegrowers at a common facility at which there may be products of two or more licensed winegrowers offered for tasting and sale by the glass or bottle or for sale in unbroken packages for consumption off premises but not for resale.

C. Except as limited by Subsection D of Section 60-7A-1 NMSA 1978, sales of wine as provided for in this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license or public celebration permit may conduct wine tastings and sell, by the glass or bottle or in unbroken packages for consumption off premises but not for resale, wine of his own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars ($10.00) to the department for a "winegrower's public celebration permit" to be issued under rules adopted by the director. Upon request, the department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other permittees. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event or 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."

Chapter 211 Section 2

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

HOUSE BILL 632

SIGNED April 6, 1999

CHAPTER 212

RELATING TO ROADS; REDUCING THE AMOUNT OF LOCAL MATCH REQUIRED FOR LOCAL ROAD PROJECTS PURSUANT TO COOPERATIVE AGREEMENTS WITH THE STATE HIGHWAY AND TRANSPORTATION DEPARTMENT; AMENDING SECTIONS OF THE NMSA 1978 TO REQUIRE THAT ALL GASOLINE TAX REVENUES DISTRIBUTED TO MUNICIPALITIES AND COUNTIES BE USED FOR ROAD CONSTRUCTION AND IMPROVEMENT OR OTHER TRANSPORTATION PURPOSES.

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

Chapter 212 Section 1

Section 1. Section 7-1-6.9 NMSA 1978 (being Laws 1991, Chapter 9, Section 11, as amended) is amended to read:

"7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO MUNICIPALITIES AND COUNTIES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to ten and thirty-eight hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, imposed by the Gasoline Tax Act.

B. The amount determined in Subsection A of this section shall be distributed as follows:

(1) ninety percent of the amount shall be paid to the treasurers of municipalities and H class counties in the proportion that the taxable motor fuel sales in each of the municipalities and H class counties bears to the aggregate taxable motor fuel sales in all of these municipalities and H class counties; and

(2) ten percent of the amount shall be paid to the treasurers of the counties, including H class counties, in the proportion that the taxable motor fuel sales outside of incorporated municipalities in each of the counties bears to the aggregate taxable motor fuel sales outside of incorporated municipalities in all of the counties.

C. This distribution shall be paid into a separate road fund in the municipal treasury or county road fund for expenditure only for construction, reconstruction, resurfacing or other improvement or maintenance of public roads, streets, alleys or bridges, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by a municipality or county to provide matching funds for projects subject to cooperative agreements entered into with the state highway and transportation department pursuant to Section 67-3-28 NMSA 1978. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or

distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges."

Chapter 212 Section 2

Section 2. Section 7-1-6.26 NMSA 1978 (being Laws 1987, Chapter 347, Section 11, as amended) is amended to read:

"7-1-6.26. COUNTY GOVERNMENT ROAD FUND--DISTRIBUTION.--

A. For the purposes of this section, "distributable amount" means the amount in the county government road fund as of the last day of any month for which a distribution is required to be made pursuant to this section in excess of the balance in that fund as of the last day of the preceding month after reduction for any required distributions for the preceding month.

B. The secretary of highway and transportation shall determine and certify on or before July 1, 1987 and on or before July 1 of each subsequent year the total miles of public roads maintained by each county pursuant to Section 66-6-23 NMSA 1978. For the purposes of this subsection, if the certified mileage of public roads maintained by a county is less than four hundred miles, the state treasurer shall increase the number of miles of public roads maintained by that county by fifty percent and revise the total miles of public roads maintained by all counties accordingly. Except as provided otherwise in Subsection D of this section, each county shall receive an amount equal to its proportionate share of miles of public roads maintained, as the number of miles for the county may have been revised pursuant to this subsection, to the total miles of public roads maintained by all counties, as that total may have been revised pursuant to this subsection, times fifty percent of the distributable amount in the county government road fund.

C. Except as provided otherwise in Subsection D of this section, each county shall receive a share of fifty percent of the distributable amount in the county government road fund as determined in this subsection. The amount for each county shall be the greater of:

(1) twenty-one cents ($.21) multiplied by the county's population as shown by the most recent federal decennial census; or

(2) the proportionate share that the taxable gallons of gasoline reported for that county for the preceding fiscal year bear to the total taxable gallons of gasoline for all counties in the preceding fiscal year, as determined by the department, multiplied by fifty percent of the distributable amount in the county government road fund.

If the sum of the amounts to be distributed pursuant to Paragraphs (1) and (2) of this subsection exceeds fifty percent of the distributable amount in the county government road fund, the excess shall be eliminated by multiplying the amount determined in

Paragraphs (1) and (2) of this subsection for each county by a fraction, the numerator of which is fifty percent of the distributable amount in the county government road fund, and the denominator of which is the sum of amounts determined for all counties in Paragraphs (1) and (2) of this subsection.

D. If the distribution for a class A county or for an H class county determined pursuant to Subsections B and C of this section exceeds an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent ($.01), the distribution for that county shall be reduced to an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent ($.01). Any amount of the reduction shall be shared among the counties whose distribution has not been reduced pursuant to this subsection in the ratio of the amounts computed in Subsections B and C of this section.

E. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by May 1, 1988, and by April 1 of every year thereafter, of the year for which distribution is being made, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages.

F. Distributions made to counties pursuant to this section shall be deposited in the county road fund to be used for the construction, reconstruction, resurfacing or other improvement or maintenance of the public roads and bridges in the county, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by the county to provide matching funds for projects subject to cooperative agreements entered into with the state highway and transportation department pursuant to Section 67-3-28 NMSA 1978."

Chapter 212 Section 3

Section 3. Section 7-1-6.27 NMSA 1978 (being Laws 1991, Chapter 9, Section 20, as amended) is amended to read:

"7-1-6.27. DISTRIBUTION--MUNICIPAL ROADS.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities for the purposes and amounts specified in this section in an aggregate amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax.

B. The distribution authorized in this section shall be used for the following purposes:

(1) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges, or any combination of the foregoing; or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges, or any combination of the foregoing; provided that any of the foregoing improvements may include, but are not limited to, the acquisition of rights of way;

(2) to provide matching funds for projects subject to cooperative agreements with the state highway and transportation department pursuant to Section 67-3-28 NMSA 1978; and

(3) for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the municipal transit law and for the operation of a vehicle emission inspection program. A municipality may engage in the business of the transportation of passengers and property within the political subdivision by whatever means the municipality may decide and may acquire cars, trucks, motor buses and other equipment necessary for operating the business. A municipality may acquire land, erect buildings and equip the buildings with all the necessary machinery and facilities for the operation, maintenance, modification, repair and storage of the cars, trucks, motor buses and other equipment needed. A municipality may do all things necessary for the acquisition and the conduct of the business of public transportation.

C. For the purposes of this section:

(1) "computed distribution amount" means the distribution amount calculated for a municipality for a month pursuant to Paragraph (2) of Subsection D of this section prior to any adjustments to the amount due to the provisions of Subsections E and F of this section;

(2) "floor amount" means four hundred seventeen dollars ($417);

(3) "floor municipality" means a municipality whose computed distribution amount is less than the floor amount; and

(4) "full distribution municipality" means a municipality whose population at the last federal decennial census was at least two hundred thousand.

D. Subject to the provisions of Subsections E and F of this section, each municipality shall be distributed a portion of the aggregate amount distributable under this section in an amount equal to the greater of:

(1) the floor amount; or

(2) eighty-five percent of the aggregate amount distributable under this section times a fraction, the numerator of which is the municipality's reported taxable gallons of gasoline

for the immediately preceding state fiscal year and the denominator of which is the reported total taxable gallons for all municipalities for the same period.

E. Fifteen percent of the aggregate amount distributable under this section shall be referred to as the "redistribution amount". Beginning in August 1990, and each month thereafter, from the redistribution amount there shall be taken an amount sufficient to increase the computed distribution amount of every floor municipality to the floor amount. In the event that the redistribution amount is insufficient for this purpose, the computed distribution amount for each floor municipality shall be increased by an amount equal to the redistribution amount times a fraction, the numerator of which is the difference between the floor amount and the municipality's computed distribution amount and the denominator of which is the difference between the product of the floor amount multiplied by the number of floor municipalities and the total of the computed distribution amounts for all floor municipalities.

F. If a balance remains after the redistribution amount has been reduced pursuant to Subsection E of this section, there shall be added to the computed distribution amount of each municipality that is neither a full distribution municipality nor a floor municipality an amount that equals the balance of the redistribution amount times a fraction, the numerator of which is the computed distribution amount of the municipality and the denominator of which is the sum of the computed distribution amounts of all municipalities that are neither full distribution municipalities nor floor municipalities."

Chapter 212 Section 4

Section 4. Section 67-3-32 NMSA 1978 (being Laws 1983, Chapter 38, Section 1) is amended to read:

"67-3-32. COOPERATIVE AGREEMENTS--PREFERENCE.--In entering into cooperative agreements pursuant to Section 67-3-28 NMSA 1978, the state highway commission shall give preference to political subdivisions of this state if the subdivision contributes an amount equal to at least twenty-five percent of the project cost."

Chapter 212 Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is August 1, 1999.

HOUSE BILL 685, AS AMENDED

CHAPTER 213

RELATING TO FINANCIAL INSTITUTIONS; CHANGING CERTAIN PROVISIONS OF THE BANKING ACT AND OTHER LAWS REGULATING BANKS AND OTHER

FINANCIAL INSTITUTIONS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 213 Section 1

Section 1. Section 58-1-3 NMSA 1978 (being Laws 1963, Chapter 305, Section 3, as amended) is amended to read:

"58-1-3. DEFINITIONS.--As used in the Banking Act, unless the context otherwise requires:

A. "action" in the sense of a judicial proceeding means any proceeding in which rights are determined;

B. "allowances for loan and lease losses" means the difference between:

(1) the balance of the valuation reserve on the date of the most recent federal financial institutions examination council report of condition or income plus additions to the reserve charged to operations since that date; and

(2) losses charged against the allowance, net of recoveries;

C. "board" means the board of directors of any given bank;

D. "capital" or "capital stock" means the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired;

E. "capital surplus" means the total of those accounts reflecting:

(1) amounts paid in excess of the par or stated value of capital stock;

(2) amounts contributed to the bank other than for capital stock;

(3) amounts transferred from undivided profits pursuant to Section 58-1-55 NMSA 1978; and

(4) other amounts transferred from undivided profits;

F. "commissioner" or "director" means the director of the financial institutions division of the regulation and licensing department;

G. "community" means a city, town or village in this state;

H. "county" means any of the political subdivisions of this state as defined in Chapter 4 NMSA 1978, except that when applied to locations within the exterior boundaries of a federally recognized Indian reservation or pueblo, "county" means all lands within the exterior boundaries of that reservation or pueblo without regard to the county boundaries established in Chapter 4 NMSA 1978. For purposes of the Banking Act, the Indian reservation or pueblo lands defined as a "county" by this subsection shall be considered to be adjoining any of the counties, as defined by Chapter 4 NMSA 1978, which are adjoining the county or counties in which that Indian reservation or pueblo is located;

I. "court" means a court of competent jurisdiction;

J. "cumulative voting" means, in all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected or to cumulate such shares and give one candidate as many votes as the number of directors, multiplied by the number of his shares, shall equal or to distribute them on the same principle among as many candidates as he thinks fit. In deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him, except that this shall not be construed as limiting the voting rights of holders of preferred stock under the terms and provisions of articles of association or amendments thereto;

K. "department" or "division" means the financial institutions division of the regulation and licensing department;

L. "executive officer", when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, the president, any vice president, the treasurer, the cashier and the comptroller or auditor, or any person who performs the duties appropriate to those offices;

M. "fiduciary" means a trustee, agent, executor, administrator, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust;

N. "good faith" means honesty in fact in the conduct or transaction concerned;

O. "intangible assets" means those purchased assets that are required to be reported as intangible assets by the federal deposit insurance corporation;

P. "item" means any instrument for the payment of money, even though it is not negotiable, but does not include money;

Q. "legal tender" means coins and currency;

R. "lessee" means a person contracting with a lessor for the use of a safe deposit box;

S. "lessor" means a bank or subsidiary renting safe deposit facilities and includes a safe deposit company organized and operating under the jurisdiction of the division solely for the purpose of leasing safe deposit facilities;

T. "limited life preferred stock" means preferred stock that has a stated maturity date or may be redeemed at the option of the holder;

U. "mandatory convertible debt" means a subordinated debt instrument that:

(1) unqualifiedly requires the issuer to exchange either common or perpetual preferred stock for the instrument by a date on or before the expiration of twelve years; and

(2) meets the requirements of Subparagraph (b) of Paragraph (2) of Subsection CC of this section or other requirements adopted by the division;

V. "minority interest in consolidated subsidiaries" means the portion of equity capital accounts of all consolidated subsidiaries of the bank that is allocated to minority shareholders of those subsidiaries;

W. "mortgage servicing rights" means the rights owned by the bank to service for a fee mortgage loans that are owned by others;

X. "officer", when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee and any trust officer, assistant vice president, assistant treasurer, assistant cashier, assistant comptroller or any person who performs the duties appropriate to those offices;

Y. "perpetual preferred stock" means preferred stock that does not have a stated maturity date and cannot be redeemed at the option of the holder;

Z. "person" means an individual, corporation, partnership, joint venture, trust estate or unincorporated association;

AA. "reason to know" means that, to a person of ordinary intelligence, the fact in question exists or has a substantial chance of existing and that the exercise of reasonable care would predicate conduct upon the assumption of its existence;

BB. "safe deposit box" means a safe deposit box, vault or other safe deposit receptacle maintained by a lessor, and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault; and

CC. "surplus" or "unimpaired surplus fund":

(1) means:

(a) the difference between: 1) the sum of capital surplus; undivided profits; reserves for contingencies and other capital reserves, excluding accrued dividends on perpetual and limited life preferred stock; minority interests in consolidated subsidiaries; and allowances for loan and lease losses; and 2) intangible assets, including those, other than mortgage servicing rights, purchased prior to April 15, 1985, but not to exceed twenty-five percent of Item 1) of this subparagraph;

(b) purchased mortgage servicing rights;

(c) mandatory convertible debt to the extent of twenty percent of the sum of Subparagraph (d) and Subparagraphs (a) and (b) of this paragraph; and

(d) other mandatory convertible debt, limited preferred stock and subordinated notes and debentures; and

(2) is subject to the following limitations:

(a) issues of limited life preferred stock and subordinated notes and debentures, except mandatory convertible debt, must have original weighted average maturities of at least five years to be included in surplus;

(b) a subordinated note or debenture must also: 1) be subordinated to the claims of depositors; 2) state on the instrument that it is not a deposit and is not insured by the federal deposit insurance corporation; 3) be approved as capital by the division; 4) be unsecured; 5) be ineligible as collateral for a loan by the issuing bank; 6) provide that once any scheduled payments of principal begin, all scheduled payments shall be made at least annually and the amount repaid in each year shall be no less than in the prior year; and 7) provide that no accelerated payment by reason of default or otherwise may be made without the prior written approval of the division; and

(c) the total amount of mandatory convertible debt included in Subparagraph (d) of Paragraph (1) of this subsection considered as surplus is limited to fifty percent of the sum of Subparagraphs (a) and (c) of Paragraph (1) of this subsection."

Chapter 213 Section 2

Section 2. Section 58-1-21 NMSA 1978 (being Laws 1963, Chapter 305, Section 21, as amended) is amended to read:

"58-1-21. LOANS.--

A. A state bank may lend on the security of the personal obligation of the borrower.

B. A state bank may lend on the security of personal property but shall not make any loan on the security of its own stock, of stock of another bank where the borrower owns, controls or holds with the power to vote ten percent or more of the outstanding voting

securities of both that bank and the lending bank or of its obligation subordinate to deposits.

C. As used in this subsection, "improved farm land" means any land used for crop or livestock production. A state bank may make real estate loans secured by liens upon unimproved real estate, upon improved real estate, including improved farmland and improved business and residential properties, and upon real estate to be improved by a building to be constructed or in the process of construction in an amount that when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, upon the real estate does not exceed the respective proportions of appraised value as provided in this section. A loan secured by real estate within the meaning of this section shall be in the form of an obligation secured by a mortgage, trust deed or other instrument, which shall constitute a lien on real estate in fee or under such rules and regulations as may be prescribed by the director, on a leasehold under a lease that does not expire for at least ten years beyond the maturity date of both and a state bank may purchase or sell obligations so secured in whole or in part. The amount of any such loan made shall not exceed sixty-six and two-thirds percent of the appraised value if the real estate is unimproved; eighty percent of the appraised value if the real estate is improved farmland or is improved by off-site improvements such as streets, water, sewers or other utilities; seventy-five percent of the appraised value if the real estate is in the process of being improved by a building to be constructed or in the process of construction; or ninety percent of the appraised value if the real estate is improved by a building. If any such loan exceeds sixty-six and two-thirds percent of the appraised value of the real estate or if the real estate is improved with a one- to four-family dwelling, installment payments shall be required that are sufficient to amortize the entire principal of the loan within a period of not more than thirty years. However:

(1) the limitations and restrictions set forth in this subsection shall not prevent the renewal or extension of loans and shall not apply to real estate loans that are guaranteed or insured by the United States or an agency thereof or by a state or agency or instrumentality thereof; and

(2) loans that are guaranteed or insured as described in Paragraph (1) of this subsection shall not be taken into account in determining the amount of real estate loans that a state bank may make in relation to its capital and surplus or its time and savings deposits or in determining the amount of real estate loans secured by other than first liens. Where the collateral for a loan consists partly of real estate and partly of other security, only the amount by which the loan exceeds the value as collateral of such other security shall be considered a loan upon the security of real estate. In no event shall a loan be considered as a real estate loan where there is a valid and binding agreement that is entered into by a financially responsible lender or other party directly with the bank that is either for the benefit of or has been assigned to the bank and pursuant to which agreement the lender or other party is required to advance to the bank within sixty months from the date of the making of the loan the full amount of the loan to be made by the bank upon the security of real estate. The amount unpaid upon any real estate loan secured by other than a first lien, when added to the amount unpaid

upon prior mortgages, liens and encumbrances, shall not exceed in an aggregate sum twenty percent of the amount of the capital stock of the bank paid in and unimpaired plus twenty percent of the amount of its unimpaired surplus fund.

D. A state bank may make real estate loans secured by liens upon forest tracts that are properly managed in all respects. The loans shall be in the form of an obligation secured by mortgage, trust deed or other such instrument, and a state bank may purchase or sell obligations so secured in whole or in part. The amount of any such loan, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, shall not exceed sixty-six and two-thirds percent of the appraised fair market value of the growing timber, lands and improvements thereon offered as security. The loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, exceed sixty-six and two-thirds percent of the original appraised total value of the property then remaining. No such loan shall be made for a longer term than three years, except that a loan may be made for a term not longer than fifteen years if the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than fifteen years and at a rate of at least six and two-thirds percent per year. All such loans secured by liens upon forest tracts shall be included in the permissible aggregate of all real estate loans and, when secured by other than first liens, in the permissible aggregate of all real estate loans secured by other than first liens prescribed in Paragraph (2) of Subsection C of this section, but no state bank shall make forest tract loans in an aggregate sum in excess of fifty percent of its capital stock paid in and unimpaired plus fifty percent of its unimpaired surplus fund.

E. Loans made to finance the construction of a building and having maturities of not to exceed sixty months where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed forty-two months may be considered as real estate loans if the loans qualify under this section, or such loans may be classed as commercial loans whether or not secured by a mortgage or similar lien on the real estate upon which the building is being constructed, at the option of each state bank that may have an interest in the loan. No state bank shall invest in or be liable on any such loans classed as commercial loans under this subsection in an aggregate amount in excess of one hundred percent of its actually paid-in and unimpaired capital plus one hundred percent of its unimpaired surplus fund.

F. Notes representing loans made pursuant to provisions of this section to finance the construction of residential or farm buildings and having maturities of not to exceed nine months shall be eligible for discount as commercial paper if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building, entered into by an individual, partnership, association or corporation acceptable to the discounting bank.

G. Loans made to any borrower where the bank looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or loans secured by an assignment of rents under a lease and where the bank wishes to take a mortgage, deed of trust or other instrument upon real estate, whether or not constituting a first lien, as a precaution against contingencies and loans in which the small business administration cooperates through agreements to participate in an immediate or deferred or guaranteed basis under the federal Small Business Act shall not be considered as real estate loans within the meaning of this section but shall be classed as commercial loans.

H. A state bank may make loans upon the security of real estate that do not comply with the limitations and restrictions in this section if the total unpaid amount loaned, exclusive of loans that subsequently comply with those limitations and restrictions, does not exceed five percent of the amount that a state bank may invest in real estate loans. The total unpaid amount so loaned shall be included in the aggregate sum that the bank may invest in real estate loans.

I. A loan made by a state bank as a noncomplying loan pursuant to Subsection H of this section may be evidenced by a debt instrument and a security instrument consisting of a mortgage, deed of trust or similar instrument that contain the following provisions:

(1) either fixed rate or adjustable rate interest accrual on the debt;

(2) an authorization for the borrower to make unscheduled payments to reduce the principal amount of the loan without relieving the borrower from continuing to make payments of installments in the amounts specified in the original debt and security instruments;

(3) the frequency of unscheduled payments shall not exceed the frequency of scheduled payments; and

(4) authorization for the borrower to retrieve by withdrawal part or all of the amount of an unscheduled payment previously made.

J. Loans made pursuant to this section shall be subject to such conditions and limitations as the director may prescribe by rule or regulation."

Chapter 213 Section 3

Section 3. Section 58-1-24 NMSA 1978 (being Laws 1963, Chapter 305, Section 24, as amended) is amended to read:

"58-1-24. DIVERSIFICATION OF LOANS AND INVESTMENTS.--

A. A state bank shall not extend credit directly by means of discount notes, issuance of letters of credit, acceptance of drafts or otherwise, or purchase any bond, note, bill of

exchange or any evidence of indebtedness, when by reason of such extension of credit or purchase, the totals of the obligations so acquired which are held by the state bank will exceed:

(1) sixty percent of total deposits or seventy-five percent of savings, whichever is greater, for obligations secured by real estate, together with the current market value of any real estate owned by the bank and not used in its banking business; or

(2) twenty percent of capital and surplus for obligations of the same obligor.

B. The limitations of Paragraph (2) of Subsection A of this section shall not apply to loans and investments otherwise authorized by the Banking Act if the obligations are:

(1) obligations of the United States, general obligations of a state or a political subdivision thereof or of a federal reserve bank;

(2) secured as to principal and interest by the guarantee, insurance or other like commitment of the United States, an agency of the United States or a federal reserve bank, whether the commitment provides for payment in cash or in obligations of the United States;

(3) secured by obligations of the United States, a state or a political subdivision thereof having a value of one hundred percent of the amount thereof;

(4) upon notes or drafts having a maturity of not more than twelve months exclusive of days of grace, drawn in good faith against actually existing values and secured by an instrument transferring or securing title to goods in process of shipment or to livestock, or creating a lien on livestock to the amount of the value of the security, but the limitation on such obligations shall be thirty percent of capital and surplus;

(5) upon notes or drafts secured by trust receipts, shipping documents or receipts of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable, nonperishable staples to the amount of eighty percent of the value of the security, and this exemption shall not apply:

(a) unless the staples are insured, if it is customary to insure them; or

(b) for more than ten months to obligations of the same obligor arising from the same transaction or secured by the same staples;

(6) secured by the assignment of accounts receivable to the extent of eighty percent of the amount of such accounts not overdue, but the limitation of these obligations shall be thirty percent of capital and surplus;

(7) those arising out of the daily transaction of the business of any clearinghouse association; or

(8) obligations that are fully secured by a pledge of a time certificate of deposit issued by the same state-chartered bank in an amount equal to or exceeding the amount of the obligation.

C. In calculating, for the purposes of this section, the obligations of a single obligor or the obligations of a specified class, there shall be included:

(1) the direct liability of the maker; the amount of a loan made to a corporation to the extent that the proceeds of the loan directly or indirectly are to be loaned to the individual;

(2) in the case of obligations of a partnership or association, the obligations of each general partner or of each member of the association; the amount of a loan made to a corporation to the extent that the proceeds of the loan directly or indirectly are to be loaned to the partnership or association;

(3) in the case of obligations of a general partner or a member of an association, the obligations of the partnership or association;

(4) in the case of obligations of a corporation, the obligations of any subsidiaries in which it owns, directly or indirectly, a majority of the outstanding voting stock;

(5) in the case of obligations of a corporation, the amount of a loan made to any other person to the extent that the proceeds of the loan directly or indirectly are to be:

(a) loaned to the corporation;

(b) used for the acquisition from the corporation of any securities issued by the corporation, other than securities acquired by an underwriter for public offering; or

(c) transferred to the corporation without fair and adequate consideration; and

(6) the discharge of an equivalent amount of debt previously incurred in good faith or value shall be deemed fair and adequate consideration."

Chapter 213 Section 4

Section 4. Section 58-1-25 NMSA 1978 (being Laws 1963, Chapter 305, Section 25, as amended) is amended to read:

"58-1-25. ACQUISITION OF PROPERTY TO SATISFY OR PROTECT PREVIOUS LOAN.--A state bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business. Property acquired in satisfaction of a loan shall be held subject to the limitations in this section.

A. Stock shall be sold within one hundred eighty days or such period as the director may allow.

B. Real estate may be used in the banking business, subject to the conditions prescribed by the Banking Act for property purchased for such use, or may be rented. Real estate may be improved to facilitate its sale. Unless used in the banking business, real estate shall be sold within five years or such period as the director may allow.

C. Other property, the acquisition of which is not otherwise authorized by the Banking Act, shall be sold within one hundred eighty days or such longer period as the director may allow.

D. The property shall be entered on the books at cost or fair market value, whichever is less. Upon transfer to other real estate owned, fair value shall be substantiated by a current appraisal prepared by an independent, qualified appraiser. All instructions from the bank to the appraiser shall be in writing. The appraisal shall recite all of the bank's instructions to the appraiser. If the property remains unsold, bank records shall be documented reflecting the bank's diligent efforts to effect sale. On or before each annual anniversary from the date of acquisition while the property remains unsold, the bank shall obtain, from an independent qualified appraiser, a current appraisal or, in letter form, certification that the fair market value has not declined.

E. The requirements for an appraisal upon transfer to other real estate owned, subsequent annual anniversary appraisal or letter certification are waived if the entire property is recorded at or below the lower of five percent of the bank's equity capital exclusive of valuation reserves or seventy-five thousand dollars ($75,000). The director may require an appraisal on a property of lesser value at his discretion.

F. For other real estate owned, recorded at or below two hundred fifty thousand dollars ($250,000), the appraisal requirements prescribed will be waived at the option of the bank if the original book value of the property is charged off at a rate of ten percent for the first year, fifteen percent for the second year, twenty percent for the third year, twenty-five percent for the fourth year and thirty percent for the fifth year."

Chapter 213 Section 5

Section 5. Section 58-1-34 NMSA 1978 (being Laws 1963, Chapter 305, Section 33) is amended to read:

"58-1-34. POWERS OF DIRECTOR.--

A. In addition to other powers conferred by law, the director has power to:

(1) restrict the withdrawal of deposits from all or one or more state banks where he finds that extraordinary circumstances make such restriction necessary for the property protection of depositors in the affected institution;

(2) authorize a state bank to:

(a) participate in a public agency created under the laws of this state or of the United States the purpose of which is to afford advantages or safeguards to banks or to depositors and to comply with all requirements and conditions imposed upon such participants;

(b) engage in any banking activity in which insured depository institutions subject to the jurisdiction of the federal government may be authorized by federal legislation to engage, provided he finds state banks or their depositors may be injured or liable to injury if the authorization is not given; and

(c) offer any product or service that is at the time authorized or permitted to any insured depository institution, provided that powers conferred by this subparagraph shall always be subject to the same limitations and restrictions that are applicable to the insured depository institution offering the product or service;

(3) order the holder of shares in a bank to refrain from voting the shares on any matter if he finds that an order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard the funds of depositors or to prevent the willful violation of the Banking Act or of any lawful rule or order issued pursuant to that act, in which case the shares of such a holder shall not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action; and

(4) order any person to cease violating a provision of the Banking Act or a lawful regulation issued pursuant to that act or to cease engaging in any unsound banking practice.

B. The director may remove or suspend, for a period of not more than three years, a director, trustee, officer or employee of a state bank who becomes ineligible to hold his position or who, after receipt of an order to cease pursuant to Subsection A of this section, violates the Banking Act or a lawful regulation or order issued pursuant to that act or who is dishonest or who is reckless or grossly incompetent in the conduct of banking business. It is unlawful for any such person after receipt of a removal or suspension order to perform any duty or exercise any power of any state bank for a period of three years or the period of suspension. A removal or suspension order shall specify the grounds thereof, and a copy of the order shall be sent to the bank concerned.

C. Notice and hearing shall be provided in advance of any action taken by the director under the authority of this section. The notice shall specify the time and place of the hearing.

D. The director has power to require a state bank to:

(1) maintain its records in accordance with standard banking practices;

(2) observe generally recognized methods and standards which he may prescribe for determining the value of various types of assets;

(3) charge off the whole or any part of an asset which cannot lawfully be held;

(4) write down an asset to its market value;

(5) file or record liens and other interests in property;

(6) obtain a financial statement from a borrower;

(7) obtain insurance against damage to real estate taken as security;

(8) search or obtain insurance of the title to real estate taken as security; and

(9) maintain adequate insurance against such other risks as the director may determine to be necessary and appropriate for the protection of depositors and the public.

E. The director has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath and examine any person under oath in connection with any subject relating to duty imposed upon or a power vested in the director. These powers shall be enforced by the district court of the district in which the hearing is held.

F. The director may, on petition of any interested person and after hearing, issue a declaratory order with respect to the applicability of the Banking Act or a rule issued pursuant to that act to any person, property or state of facts. The order shall bind the director and all parties to the proceeding on the state of facts declared unless it is modified or reversed by a court. A declaratory order may be reviewed and enforced in the same manner as other orders of the director, but the refusal to issue a declaratory order shall be reviewable.

G. No person shall be subjected to any civil or criminal liability for any act or ommission to act in good faith in reliance upon an existing order, regulation or definition of the director, notwithstanding a subsequent decision by a court invalidating the order, regulation or definition."

Chapter 213 Section 6

Section 6. Section 58-1-39 NMSA 1978 (being Laws 1975, Chapter 330, Section 23) is amended to read:

"58-1-39. BANK RECORDS--PRESCRIBING MANNER OF KEEPING.--

A. The director has the power to require banks under his supervision to keep their records in such manner and form that they will at all times reflect the true condition of the bank and permit it to be readily and thoroughly audited.

B. Every state bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the provisions of this section.

C. Each state bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its daily statements of condition, its general journal, its investment ledger, its copies of bank examination reports and all records which the director in accordance with the provisions of this section requires to be retained permanently.

D. All other bank records shall be retained for such periods as the director in accordance with the provisions of this section prescribes.

E. The director shall from time to time issue regulations classifying all records kept by the state banks and prescribing the period for which records of each class shall be retained. Periods may be permanent or for a lesser term of years. Regulations may from time to time be amended or repealed. Prior to issuing any such regulation, the director shall consider:

(1) actions at law and administrative proceedings in which the production of bank records might be necessary or desirable;

(2) state and federal statutes of limitation applicable to such actions or proceedings;

(3) the availability of information contained in bank records from other sources; and

(4) such other matters as the director deems pertinent in order that his regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.

F. Any state bank may dispose of any record which has been retained for the period prescribed by or in accordance with the provisions of this section for retention of records of its class and shall thereafter be under no duty to produce that record in any action or proceeding.

G. Any state bank may cause any or all records at any time in its custody to be converted into electronic images or be reproduced by the microphotographic process, and an image or reproduction has the same force and effect as the original and may be admitted in evidence equally with the original.

H. To the extent that they are not in contravention of any law of the United States, the provisions of this section apply to all banks doing business in this state."

Chapter 213 Section 7

Section 7. Section 58-1-54 NMSA 1978 (being Laws 1973, Chapter 130, Section 1, as amended) is amended to read:

"58-1-54. POWERS OF DIRECTOR AND OF STATE BANKS.--In addition to other powers provided for the director and for state banks in the Banking Act notwithstanding any other provision of laws, the director may grant to state banks any of the powers and authority that national banks or federally chartered or insured depository institutions are or may be authorized, empowered, permitted or otherwise allowed to exercise. As used in this section and in Section 58-1-34 NMSA 1978, "federally chartered or insured depository institution" means a bank, savings bank, savings and loan association or credit union."

Chapter 213 Section 8

Section 8. Section 58-5-7 NMSA 1978 (being Laws 1975, Chapter 330, Section 3, as amended) is amended to read:

"58-5-7. LEGAL HOLIDAYS FOR BANKS.--

A. The following legal holidays may be observed by banks, notwithstanding the provisions of Sections 12-5-1 through 12-5-9 NMSA 1978:

New Year's Day .... January 1

Martin Luther King, Jr.'s Birthday .... 3rd Monday in January

Washington's Birthday .... 3rd Monday in February

Memorial Day .... the date determined by the director to be the date recognized by the majority of the federal reserve districts in New Mexico

Independence Day .... July 4

Labor Day .... 1st Monday in September

Columbus Day .... 2nd Monday in October

Armistice Day and Veterans' Day .... November 11

Thanksgiving Day .... 4th Thursday in November

Christmas Day .... December 25.

Whenever one of these bank holidays falls on a Sunday, the following Monday is a legal bank holiday. Whenever one of these bank holidays falls on a Saturday, that Saturday and the preceding Friday are legal bank holidays.

B. Nothing in this section shall be deemed to require a bank to close or cease operating any remote financial service unit installed pursuant to the Remote Financial Service Unit Act or any automated teller machines located on the bank premises during all or any part of a legal bank holiday."

Chapter 213 Section 9

Section 9. Section 58-6-5 NMSA 1978 (being Laws 1990, Chapter 45, Section 1) is amended to read:

"58-6-5. CREDIT AGREEMENTS--REQUIREMENTS.--

A. As used in this section, "financial institution" means a bank, savings and loan association or credit union authorized to transact business in the state.

B. A contract, promise or commitment to loan money or to grant, extend or renew credit or any modification thereof, in an amount greater than twenty-five thousand dollars ($25,000), not primarily for personal, family or household purposes, made by a financial institution shall not be enforceable unless in writing and signed by the party to be charged or that party's authorized representative."

Chapter 213 Section 10

Section 10. REPEAL.--Sections 58-1-42, 58-6-1 and 58-6-2 NMSA 1978 (being Laws 1975, Chapter 330, Section 26 and Laws 1945, Chapter 122, Sections 1 and 2, as amended) are repealed.

HOUSE BILL 710, AS AMENDED

CHAPTER 214

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR THREE-YEAR CONTRACTS FOR CERTIFIED SCHOOL ADMINISTRATORS.

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

Chapter 214 Section 1

Section 1. Section 22-10-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 113, as amended) is amended to read:

"22-10-11. EMPLOYMENT CONTRACTS--DURATION.--

A. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be in writing on forms approved by the state board. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for termination of the contract and other provisions required by the regulations of the state board.

B. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be for a period of one school year except:

(1) contracts for less than one school year are permitted to fill personnel vacancies which occur during the school year;

(2) contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;

(3) contracts for less than one school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one school year;

(4) contracts not to exceed three years are permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and

(5) contracts not to exceed three years are permitted at the discretion of the local school board for certified school instructors in public schools who have been employed in the school district for three consecutive school years.

C. Persons employed under contracts for periods of less than one school year as provided in Paragraphs (1) and (2) of Subsection B of this section shall be accorded all the duties, rights and privileges of the Certified School Personnel Act.

D. In determination of eligibility for unemployment compensation rights and benefits for certified school instructors where those rights and benefits are claimed to arise from the employment relationship between governing authorities of state agencies or local school boards and certified school instructors, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section 22-10-12 NMSA 1978, a person employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract."

HOUSE BILL 758

CHAPTER 215

RELATING TO ADMINISTRATION OF PROPERTY TAXES; REQUIRING USE OF GEOGRAPHIC INFORMATION SYSTEMS.

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

Chapter 215 Section 1

Section 1. Section 7-38-9 NMSA 1978 (being Laws 1973, Chapter 258, Section 49) is amended to read:

"7-38-9. DESCRIPTION OF PROPERTY FOR PROPERTY TAXATION PURPOSES.--

A. Property shall be described for property taxation purposes by a description sufficiently adequate and accurate to identify it. Real property shall be described under a uniform system of real property description in accordance with regulations of the department. The department shall promulgate regulations establishing a uniform system of real property description to be used by the department and all assessors. The system shall include requirements for a comprehensive mapping or geographic information system, the use of uniform property record documents and uniform coding of real property descriptions.

B. Real property that has been valued for property taxation purposes prior to the effective date of the Property Tax Code by a description consisting of a mere reference to the time and place of filing or recording in the office of the county clerk of any map or other instrument describing the property with sufficient preciseness to permit its identification shall be considered to have been sufficiently described for property taxation purposes. All prior assessments, records and instruments maintained or issued by property taxation officers which describe the property by such a reference are validated and given the same force and effect as if a description of the property had been used that would comply with this section."

Chapter 215 Section 2

Section 2. Section 7-38-10 NMSA 1978 (being Laws 1973, Chapter 258, Section 50) is amended to read:

"7-38-10. DEPARTMENT MAY INSURE COMPLIANCE WITH MAPPING AND DESCRIPTION OF REAL PROPERTY REGULATIONS BY DEPARTMENTAL INSTALLATION OF REQUIRED SYSTEM--REIMBURSEMENT BY COUNTY OF COSTS INCURRED.--Whenever the director determines that it is necessary to insure compliance with departmental regulations relating to comprehensive mapping or geographic information systems and real property description or to correct county deficiencies in this regard, he shall order the installation by the department of the necessary maps and other increments of the property description system in the county. The director may require the county to reimburse the department for costs incurred by the department in the installation or correction of a property description system."

HOUSE BILL 795, AS AMENDED

CHAPTER 216

RELATING TO JUVENILE JUSTICE; PROVIDING FOR THE DETENTION OF A CHILD WHO POSSESSES A FIREARM ON SCHOOL PREMISES; ENACTING A SECTION OF THE CHILDREN'S CODE.

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

Chapter 216 Section 1

Section 1. A new section of the Children's Code is enacted to read:

"CHILD IN POSSESSION OF A FIREARM ON SCHOOL PREMISES--DETENTION--HEARING.--

A. If a public school administrator or employee has reasonable cause to believe that a child is in possession of or has been in possession of a firearm on school premises in violation of the federal Gun Free Schools Act of 1994 or Section 30-7-2.1 NMSA 1978, the administrator or employee shall immediately report the child's actions to a law enforcement agency and the children, youth and families department.

B. Upon receipt of a report pursuant to Subsection A of this section, the law enforcement agency shall immediately conduct an investigation to determine if there is probable cause to believe that the child possessed a firearm on school premises.

C. If the law enforcement agency determines there is probable cause to believe that the child possessed a firearm on school premises, the law enforcement agency shall immediately take the child into custody and deliver the child to a detention facility licensed by the department. After the child is delivered to a detention facility, the department shall comply with the notification provisions set forth in Subsection C of Section 32A-2-10 NMSA 1978. The child shall be detained in the detention facility, pending a detention hearing pursuant to the provisions of Section 32A-2-13 NMSA 1978."

D. "Firearm" means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun."

Chapter 216 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 231, AS AMENDED

CHAPTER 217

RELATING TO TAXATION; PROVIDING INCOME TAX AND CORPORATE INCOME TAX CREDITS FOR EMPLOYMENT OF YOUTH PARTICIPATING IN CERTAIN SUMMER SCHOOL-TO-CAREER JOB PROGRAMS.

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

Chapter 217 Section 1

Section 1. A new section of the Income Tax Act is enacted to read:

"JOB MENTOR SHIP TAX CREDIT.--

A. To encourage New Mexico businesses to hire youth participating in certified school-to-career programs, any taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is the owner of a New Mexico business may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the business during the taxable year for which the return is filed. The tax credit may be known as the "job mentor ship tax credit".

B. A taxpayer who is the owner of a New Mexico business may claim the credit provided in this section for each taxable year in which the business employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the business for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars ($12,000) in any taxable year. The taxpayer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The number of qualified students whose employment qualifies for a job mentor ship tax credit pursuant to this section or the Corporate Income and Franchise Tax Act shall

be limited to a pilot program of one thousand qualified students in any calendar year. The department shall allocate annually to the state school-to-work director one thousand pilot program certificates that shall be distributed by the state school-to-work director to administrators of certified school-to-career programs. The pilot program certificates, when properly executed, shall serve as evidence of the taxpayer's eligibility for the job mentor ship tax credit. The maximum number of pilot program certificates that may be issued to a single school-to-career program administrator is equal to the number of qualified school-to-career participants in that program on May 1 of the current calendar year. The pilot program certificates shall be issued in the order in which they are requested. To claim the credit pursuant to this section, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed pilot program certificate;

(2) information required by the secretary with respect to the employee's employment by the business during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentor ship tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act.

D. The credit provided pursuant to this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total tax credits claimed under this section shall not exceed the maximum allowable pursuant to Subsection B of this section.

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 credit that would have been allowed on a joint return.

F. A taxpayer who otherwise qualifies for and claims a job mentor ship tax credit for employment of qualified students by a partnership, limited partnership, limited liability company, S corporation or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership, limited partnership, limited liability company, S corporation or association. The total credit claimed by all members of the business shall not exceed the maximum tax credit allowable pursuant to Subsection B of this section.

G. As used in this section:

(1) "certified school-to-career program" means a summer employment program certified by the state school-to-work office as a school-to-career program designed for secondary

school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a partnership, limited partnership, limited liability company treated as a partnership for federal income tax purposes, S corporation or sole proprietorship that carries on a trade or business in New Mexico and that employs in New Mexico less than three hundred full-time employees at any one time during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more than twenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a certified school-to-career program."

Chapter 217 Section 2

Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"JOB MENTOR SHIP TAX CREDIT.--

A. To encourage New Mexico businesses to hire youth participating in certified school-to-career programs, any taxpayer who is a New Mexico business and who files a corporate income tax return may claim a credit in an amount equal to fifty percent of gross wages paid to qualified students who are employed by the taxpayer during the taxable year for which the return is filed. The tax credit may be known as the "job mentor ship tax credit".

B. A taxpayer may claim the credit provided in this section for each taxable year in which the taxpayer employs one or more qualified students. The maximum aggregate credit allowable shall not exceed fifty percent of the gross wages paid to not more than ten qualified students employed by the taxpayer for up to three hundred twenty hours of employment of each qualified student in each taxable year for a maximum of three taxable years for each qualified student. In no event shall a taxpayer claim a credit in excess of twelve thousand dollars ($12,000) in any taxable year. The employer shall certify that hiring the qualified student does not displace or replace a current employee.

C. The number of qualified students whose employment qualifies for a job mentor ship tax credit pursuant to this section or the Income Tax Act shall be limited to a pilot program of one thousand qualified students in any calendar year. The department shall allocate annually to the state school-to-work director one thousand pilot program certificates that shall be distributed by the state school-to-work director to administrators of certified school-to-career programs. The pilot program certificates, when properly executed, shall serve as evidence of the taxpayer's eligibility for the job mentor ship tax credit. The maximum number of pilot program certificates that may be issued to a single school-to-career program administrator is equal to the number of qualified school-to-career participants in that program on May 1 of the current calendar year. The pilot

program certificates shall be issued in the order in which they are requested. To claim the credit under this section, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed pilot program certificate;

(2) information required by the secretary with respect to the employee's employment by the taxpayer during the taxable year for which the credit is claimed; and

(3) information required by the secretary that the employee was not also employed in the same taxable year by another New Mexico business qualifying for and claiming a job mentor ship tax credit for that employee pursuant to this section or the Income Tax Act.

D. The credit provided under this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years; provided the total tax credits claimed under this section shall not exceed the maximum allowable under Subsection B of this section.

E. As used in this section:

(1) "certified school-to-career program" means a summer employment program certified by the state school-to-work office as a school-to-career program designed for secondary school students to create academic and career goals and objectives and find employment in a job meeting those goals and objectives;

(2) "New Mexico business" means a corporation that carries on a trade or business in New Mexico and that employs in New Mexico less than three hundred full-time employees during the taxable year; and

(3) "qualified student" means an individual who is at least fourteen years of age but not more thantwenty-one years of age who is attending full time an accredited New Mexico secondary school and who is a participant in a certified school-to-career program."

Chapter 217 Section 3

Section 3. TEMPORARY PROVISION--EXHAUSTION OF CREDIT.--If an income tax or corporate income tax taxpayer has been allowed a credit pursuant to Section 1 or 2 of this act and any portion of the credit allowed is unused on the date the sections are repealed, the unused amount may be carried forward regardless of the repeal to any taxable year within the three consecutive taxable years following the first taxable year for which the claim was allowed.

Chapter 217 Section 4

Section 4. DELAYED REPEAL.--Sections 1 and 2 of this act are repealed effective January 1, 2002.

Chapter 217 Section 5

Section 5. APPLICABILITY.--The provisions of this act apply to taxable years beginning in calendar years 1999 through 2001.

HOUSE BILL 236, AS AMENDED

CHAPTER 218

RELATING TO TAXATION; ENACTING A ONE-TIME JOB CREATION TAX CREDIT FOR COMPLETION OF NEW CRUDE OIL AND NATURAL GAS WELLS; CREATING A FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 218 Section 1

Section 1. A new section of the Oil and Gas Emergency School Tax Act is enacted to read:

"ONE-TIME TAX CREDIT FOR NEW WELLS--FUND CREATED.--

A. To stimulate economic development and provide jobs, the operator of a new crude oil or natural gas well may upon completion of the new well apply for and receive a one-time credit against the tax imposed pursuant to the Oil and Gas Emergency School Tax Act of fifteen thousand dollars ($15,000) subject to the provisions of this section.

B. A new well shall qualify for the tax credit in this section if the oil conservation division of the energy, minerals and natural resources department certifies to the taxation and revenue department that:

(1) the operator applying for the tax credit commenced drilling the new well after January 1, 1999 and prior to July 1, 2000;

(2) the new well was completed; and

(3) the new well is one of the first six hundred new wells drilled in the period from January 1, 1999 to July 1, 2000.

C. The tax credit may be applied only to the operator's oil and gas emergency school tax liability. If the credit exceeds the taxpayer's liability for a reporting period, the credit

may be applied to the operator's tax liability in succeeding reporting periods prior to July 1, 2001.

D. The "oil and gas tax credit fund" is created in the state treasury. The fund shall be administered by the department. Money in the fund shall be used to pay for the tax credit provided in this section. The department shall transfer monthly from the oil and gas tax credit fund to the general fund an amount equal to the amount of tax credit claimed and applied to the oil and gas emergency school tax in that month.

E. As used in this section, "new well" means a crude oil or natural gas producing well for which drilling commenced after January 1, 1999 and before July 1, 2000 or a horizontal crude oil or natural gas well that was recompleted from a vertical well by drilling operations that commenced after January 1, 1999 and before July 1, 2000 and that has been approved and certified as such by the oil conservation division of the energy, minerals and natural resources department."

Chapter 218 Section 2

Section 2. APPROPRIATION--OIL AND GAS TAX CREDIT FUND.--Nine million dollars ($9,000,000) is appropriated from the general fund to the oil and gas tax credit fund for expenditure in fiscal years 1999 through 2001 to carry out the provisions of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the general fund.

Chapter 218 Section 3

Section 3. REPEAL.--Section 1 of this act is repealed effective July 1, 2001.

Chapter 218 Section 4

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

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 280

SIGNED April 6, 1999

CHAPTER 219

RELATING TO POST-SECONDARY EDUCATION; REVISING PROVISIONS GOVERNING PUBLIC, POST-SECONDARY EDUCATIONAL INSTITUTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 219 Section 1

Section 1. Section 21-13-8 NMSA 1978 (being Laws 1963, Chapter 17, Section 7, as amended) is amended to read:

"21-13-8. COMMUNITY COLLEGE BOARD.--

A. Community college board members shall be over twenty-one years of age, qualified electors and residents of the community college district.

B. Community college board members shall be elected for staggered terms of six years from April 1 succeeding their elections; provided that terms and staggering shall continue to be as they are on January 1, 1998. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members. An individual appointed by the remaining members of the board to fill a vacancy in office shall serve until the next community college board election, at which time candidates shall file for and be elected to fill the vacant position to serve the remainder of the unexpired term.

C. A community college board shall select from its members a chairman and secretary who shall serve in these offices until the next regular community college board election. After each community college board election, the members shall proceed to reorganize."

Chapter 219 Section 2

Section 2. Section 21-13-11 NMSA 1978 (being Laws 1963, Chapter 17, Section 10, as amended) is amended to read:

"21-13-11. STANDARDS AND ACCREDITING OF COMMUNITY COLLEGES.--

A. The community college board shall prescribe the course of study for the community college and shall define, in conjunction with the commission on higher education, official standards of excellence in all matters relating to the administration, course of study and quality of instruction, except that the prescribed standards may not be less in quality or quantity than those prescribed for other state institutions of higher learning by the regional accrediting agency that accredits other colleges and universities of the state.

B. The executive director of the commission on higher education shall annually inspect, or investigate through the requirement of reports prescribed by him, each community college. The inspection or investigation by report shall be conducted upon the facilities and program of each community college to determine the extent of compliance with the rules promulgated by the commission. A report of each inspection or final investigation by report shall be made to the commission.

C. In the event of any serious deviation from established practices and procedures or any deficiencies that impair the quality of the instructional program in any community college, the commission on higher education shall first call these to the attention of the president of the community college and the community college board.

D. In the case of repeated failure to meet the standards provided for in Subsection A of this section, the commission on higher education may take action discontinuing the approval of any community college so delinquent. Upon a showing that the unsatisfactory conditions have been remedied, the commission may reinstate its approval of a disapproved community college."

Chapter 219 Section 3

Section 3. Section 21-13-12 NMSA 1978 (being Laws 1963, Chapter 17, Section 11, as amended) is amended to read:

"21-13-12. DEGREES AND CERTIFICATES AWARDED.--The community college board of a community college may award the appropriate degree upon the completion of a curriculum organized for that purpose and approved by the commission on higher education. An associate degree or certificate may be awarded only to students as recommended by the faculty, the chief academic officer and the president of the community college as having completed satisfactorily the prescribed course of study."

Chapter 219 Section 4

Section 4. Section 21-13-19 NMSA 1978 (being Laws 1968, Chapter 70, Section 2, as amended) is amended to read:

"21-13-19. ENROLLMENT DEFINED--PAYMENTS.--

A. For those students in community colleges taking college-level courses, full-time-equivalent students shall be defined and computed by the commission on higher education in the same manner in which it defines and computes full-time-equivalent students for all other college-level programs within its jurisdiction.

B. No student shall be included in any calculations made under the provisions of this section if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the community college the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the community college.

C. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars ($325) for each full-time-equivalent student for any community college that levies a tax at a rate less than two dollars ($2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-

7.1 NMSA 1978 upon a rate of at least two dollars ($2.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, or any community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The commission on higher education shall require from the community college such reports as the commission deems necessary for the purpose of determining the number of full-time-equivalent students at the community college eligible to receive support under this section.

E. A community college board shall establish tuition and fee rates for its respective institutions for full-time, part-time, resident and nonresident students, as defined by the commission on higher education.

F. A community college board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided for lottery scholarships, the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the community college board of his institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. At least thirty-three and one-third percent of the gratis scholarships established and granted by each community college board each year shall be granted on the basis of financial need."

Chapter 219 Section 5

Section 5. Section 21-13-21 NMSA 1978 (being Laws 1963, Chapter 17, Section 16, as amended) is amended to read:

"21-13-21. ADDITION OF SCHOOL DISTRICTS TO EXISTING

COMMUNITY COLLEGE DISTRICTS.--

A. The qualified electors within the territorial limits of a school district, group of school districts within a county or school districts in an adjoining county, not included in the community college district as originally formed, may petition the commission on higher education to be added to the community college district. The commission shall examine the petition and, if it finds that the petition is signed by the requisite number of qualified electors as provided in Sections 21-13-4 and 21-13-5 NMSA 1978, the commission shall cause a survey to be made of the petitioning district to determine the desirability of the proposed extension of the area of the community college district.

B. In conducting the survey, the commission on higher education shall ascertain the attitude of the community college board and collect other information as prescribed in

Section 21-13-5 NMSA 1978. If on the basis of the survey the commission finds that the proposed addition of the petitioning district will promote an improved education service in the area, it shall approve the petition. Thereafter, the commission shall proceed to call an election within the petitioning district and in the established community college district on the question of the inclusion of the area in the community college district. In the election, the procedure prescribed in Sections 21-13-6, 21-13-7 and 21-13-18 NMSA 1978 shall be followed.

C. If it appears on canvass of the results of the election in the office of the executive director of the commission on higher education that a majority of the votes cast in each of the petitioning areas and within the established community college district was in favor of the addition of the petitioning area, the executive director shall notify the boards of education within each school district and the community college board of the results of the election and shall declare the extension of the boundaries of the community college district to include the petitioning area in which the proposed addition referendum carried by a majority vote. The addition shall take effect on the next succeeding July 1.

D. The territory within each school district added to any existing community college district shall automatically be subject to any special levy on taxable property approved for the community college district for the maintenance of facilities and services and for support of bond issues."

Chapter 219 Section 6

Section 6. Section 21-13-23 NMSA 1978 (being Laws 1963, Chapter 17, Section 18, as amended) is amended to read:

"21-13-23. DISSOLUTION OF COMMUNITY COLLEGE DISTRICTS.--Community college districts may be dissolved in the following manner:

A. submission of a plan for the dissolution of the community college district to the executive director of the commission on higher education by a petition signed by ten percent of the qualified electors residing within the district. Upon receipt of a proper plan and petition, the executive director shall call a special election for the purpose of referring to the qualified electors residing in the district the question of dissolution. Plans for the dissolution of a community college district shall provide for the payment of all district debts and liabilities and for the equitable distribution of all remaining assets to the school districts within the community college district;

B. if the executive director of the commission on higher education finds that a majority of the qualified electors voting on the issue at the special election has authorized the dissolution, the community college board shall proceed with the approved plan. Upon completion of the plan, the community college board shall submit a full report to the executive director and a copy of the report to each local school district board within the community college district; and

C. upon receipt of the final report of the community college board, the executive director of the commission on higher education shall examine the report to determine whether any outstanding obligations still exist and whether the terms of the approved plan have been accomplished. If, upon determination by the executive director, no obligations are yet outstanding and the provisions of the plan have been fulfilled, he shall formally declare the community college district dissolved."

Chapter 219 Section 7

Section 7. Section 21-13-24.1 NMSA 1978 (being Laws 1980, Chapter 53, Section 17, as amended) is amended to read:

"21-13-24.1. ESTABLISHING PROCEDURES FOR INDEPENDENCE--FUNDING--TUITION--APPROPRIATION--LOCAL SUPPORT LEVEL--OUTSTANDING INDEBTEDNESS.--Any institution established in accordance with Chapter 21, Article 14 or 16 NMSA 1978 that desires to become an independent institution pursuant to the Community College Act and to receive more than three hundred twenty-five dollars ($325) per full-time-equivalent student is subject to the following:

A. approval of the institutional request for independent status by the commission on higher education;

B. tuition rates shall be recommended by the commission on higher education and shall be set by the community college board;

C. the commission on higher education shall recommend an appropriation for the institution based upon expenditure levels determined by commission formulas in relation to its authorized program and its available funds from nongeneral fund sources, and the recommended appropriation shall be an amount not less than three hundred twenty-five dollars ($325) for each full-time-equivalent student;

D. the minimum level of local support for operational purposes shall be a tax rate of two dollars ($2.00), or any lower amount required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon an amount of at least two dollars ($2.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code; and

E. the community college board shall provide for the assumption of any outstanding indebtedness of the institution desiring to become independent by the voters of the community college district."

Chapter 219 Section 8

Section 8. Section 21-14-1 NMSA 1978 (being Laws 1957, Chapter 143, Section 1, as amended) is amended to read:

"21-14-1. BRANCH COMMUNITY COLLEGE EDUCATIONAL PROGRAM AND ENROLLMENT DEFINED.--

A. "Branch community college educational program", for the purposes of Chapter 21, Article 14 NMSA 1978, includes either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both.

B. The calculation of full-time-equivalent student population for the purposes of Chapter 21, Article 14 NMSA 1978 shall include students enrolled in college-level courses and students enrolled in vocational and technical courses taught by a branch community college that is recognized by the vocational education division as an area vocational school or in courses that are approved by the state board of education. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time-equivalent student population. The public school district shall transfer to the branch community college the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the branch community college."

Chapter 219 Section 9

Section 9. Section 21-14-5 NMSA 1978 (being Laws 1957, Chapter 143, Section 4, as amended) is amended to read:

"21-14-5. FINANCING OF BRANCH COMMUNITY COLLEGES--TUITION AND FEE WAIVERS.--

A. Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available pursuant to the provisions of the College District Tax Act or Chapter 21, Article 14 NMSA 1978.

B. The board of regents of the respective parent institution of the branch community college may establish and grant gratis scholarships to students of the branch community college who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-1-4.3 NMSA 1978, the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in the branch community college and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of his institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. At least thirty-three and one-third percent of the gratis scholarships established and granted by the board of regents for a branch community college each year shall be granted on the basis of financial need."

Chapter 219 Section 10

Section 10. Section 21-14A-2 NMSA 1978 (being Laws 1982, Chapter 42, Section 2, as amended) is amended to read:

"21-14A-2. DEFINITIONS.--As used in the Off-Campus Instruction Act:

A. "off-campus instruction program" means either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both; and

B. "full-time-equivalent student" includes students enrolled in college-level courses and students enrolled in vocational and technical courses taught by an off-campus instruction program. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time-equivalent student population. The public school district shall transfer to the parent institution the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the off-campus site."

Chapter 219 Section 11

Section 11. Section 21-16-2 NMSA 1978 (being Laws 1963, Chapter 108, Section 2) is amended to read:

"21-16-2. DEFINITIONS.--As used in Chapter 21, Article 16 NMSA 1978:

A. "technical and vocational institute" means a public educational institution, including a post-secondary educational institution organized before July 1, 1999 as an area vocational school pursuant to Chapter 21, Article 17 NMSA 1978 that provides not to exceed two years of vocational and technical curricula and, in addition, some appropriate courses and programs in the arts and sciences;

B. "board" means the governing board of the district;

C. "full-time equivalent student" means that term as it is defined in Section 21-16-9 NMSA 1978;

D. "school district" means that term as it is defined in Subsection J of Section 22-1-2 NMSA 1978; and

E. "district" means a technical and vocational institute district."

Chapter 219 Section 12

Section 12. Section 21-16-5.1 NMSA 1978 (being Laws 1994, Chapter 83, Section 3) is amended to read:

"21-16-5.1. BOARD MEMBERS--ELECTED FROM DISTRICTS--ELECTIONS.--

A. A district board shall be composed of five or seven members elected for four-year terms who shall reside in and be elected from single-member districts as provided in this section. On July 1, 1999 any board, the members of which have not been elected from single-member districts, shall district and hold a special election within one year from the effective date of this 1999 act. If the board is a seven-member board, board members shall be elected for all seven positions on the board, with the board members elected to positions 1, 3, 5 and 7 to be elected for initial terms of two years and the board members elected to positions 2, 4 and 6 to be elected for initial terms of four years. If the board is a five-member board, board members elected to positions 1, 3 and 5 shall be elected for initial terms of two years and board members elected to positions 2 and 4 shall be elected for initial terms of four years. After the initial election for a district board, each board member shall be elected for a term of four years.

B. Except where specific provision is otherwise provided by law, all election proceedings for technical and vocational institute district elections shall be conducted pursuant to the provisions of the School Election Law with the president of the institute serving in the place of the superintendent of schools in every case.

C. Once following each federal decennial census, the board shall redistrict the technical and vocational institute district into election districts to ensure that the districts remain as equal in population as is practicable. The new districts shall go into effect at the first regular board election thereafter. Candidates for the new single-member districts that are scheduled to be voted on at the election shall reside in and be elected from the appropriate new single-member district. Incumbent board members whose districts before redistricting were not scheduled to be voted on at the election need not reside in the new single-member districts corresponding to their position numbers and may serve out their terms. At the second regular board election held after the redistricting, all candidates for the new single-member districts that are scheduled to be voted on shall reside in and be elected from the appropriate single-member district.

D. All election districts covered by this section shall be contiguous, compact and as equal in population as is practicable.

E. A vacancy occurring on the board shall be filled in the same manner as provided for school board vacancies in Section 22-5-9 NMSA 1978; provided, however, a vacancy that occurs in an election district where a nonresident board member had been serving shall be filled with a resident of that district."

Chapter 219 Section 13

Section 13. Section 21-16-7 NMSA 1978 (being Laws 1963, Chapter 108, Section 7) is amended to read:

"21-16-7. STANDARDS.--The state board of education shall, in conjunction with the board, prescribe the course of study for the technical and vocational institute. The board, in conjunction with the commission on higher education, shall define official standards of excellence in all matters relating to the administration, course of study and quality of instruction."

Chapter 219 Section 14

Section 14. Section 21-16-8 NMSA 1978 (being Laws 1968, Chapter 59, Section 1, as amended) is amended to read:

"21-16-8. PURPOSE OF ACT.--It is the purpose of the Technical and Vocational Institute Act to extend state support to public school vocational and technical education programs of not more than two years' duration designed to fit individuals for employment, provided such individuals are students enrolled in a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act."

Chapter 219 Section 15

Section 15. Section 21-16-10 NMSA 1978 (being Laws 1968, Chapter 59, Section 3, as amended) is amended to read:

"21-16-10. APPROPRIATION--DISTRIBUTION.--

A. The commission on higher education shall recommend an appropriation for each technical and vocational institute based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars ($325) for each full-time-equivalent student.

B. The commission on higher education shall by rule provide for the method for calculating the number of full-time-equivalent students in technical and vocational institutes. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources. The public school district shall transfer to the technical and vocational institute the tuition and fees for any student who, during the term, is counted in the membership of the public school district and will receive high school credit for coursework at the technical and vocational institute.

C. The commission on higher education shall not recommend an appropriation greater than three hundred twenty-five dollars ($325) for each full-time-equivalent student for any technical and vocational institute that levies a tax at a rate less than two dollars ($2.00), unless a lower amount is required by operation of the rate limitation provisions

of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars ($2.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, or any technical and vocational institute that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-16-10.1 NMSA 1978, the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in the technical and vocational institute and shall not be established and granted for summer sessions. The president of the technical and vocational institute shall select and recommend to the board as recipients of scholarships students who possess good moral character and satisfactory initiative, scholastic standing and personality. At least thirty-three and one-third percent of the gratis scholarships established and granted by the board each year shall be granted on the basis of financial need."

Chapter 219 Section 16

Section 16. Section 21-16-10.1 NMSA 1978 (being Laws 1996, Chapter 71, Section 6) is amended to read:

"21-16-10.1. TUITION SCHOLARSHIPS AUTHORIZED.--

A. To the extent that funds are made available by the legislature from the lottery tuition fund, the board of a technical and vocational institute shall award tuition scholarships for qualified resident students attending a technical and vocational institute.

B. The tuition scholarships authorized in this section shall apply only to full-time resident students who, immediately upon completion of a high school curriculum at a public or accredited private New Mexico high school or upon receiving a graduate equivalent diploma, are accepted for entrance to and attend a technical and vocational institute. Each tuition scholarship shall be awarded for up to two consecutive years beginning the second semester of the recipient's first year of enrollment, provided that the recipient has maintained residency in New Mexico and maintained a grade-point average of 2.5 or higher on a 4.0 scale during his first semester of full-time enrollment with renewal of an additional two years upon transfer.

C. The commission on higher education shall prepare guidelines setting forth explicit student continuing eligibility criteria and guidelines for administration of the tuition scholarship program. Guidelines shall be distributed to the boards of technical and vocational institutes to enable a uniform availability of the resident student tuition scholarships."

Chapter 219 Section 17

Section 17. Section 21-16-14 NMSA 1978 (being Laws 1963, Chapter 108, Section 11) is amended to read:

"21-16-14. ADDITION OF SCHOOL DISTRICTS TO EXISTING TECHNICAL AND VOCATIONAL INSTITUTE DISTRICTS.--

A. Any school district, group of school districts within a county or school districts in an adjoining county, not included in the technical and vocational institute district as originally formed, may petition the state board of education to be added to the technical and vocational institute district. The state board of education shall examine the petition, and, if it finds that the petition is signed by the requisite number of qualified voters as provided in Section 21-16-3 NMSA 1978, the state board of education shall cause a survey to be made of the petitioning district or districts to determine the desirability of the proposed extension of the area of the technical and vocational institute district.

B. In conducting the survey, the state board of education, in conjunction with the commission on higher education, shall ascertain the attitude of the technical and vocational institute board and collect other information as prescribed in Section 21-16-3 NMSA 1978. If on the basis of the survey the state board of education finds that the proposed addition of the school district or districts will promote an improved education service in the area, it shall approve the petition. Thereafter, the state board of education shall proceed to call an election within the petitioning school district or districts and in the established technical and vocational institute district on the question of the inclusion of the area in the institute district.

C. If it appears on canvass of the results of the election that a majority of the votes cast in each of the petitioning school districts and within the established institute district was in favor of the addition of the petitioning school district or districts, the state board of education shall notify the local school board of each school district and the technical and vocational institute board of the results of the election and shall declare the extension of the boundaries of the institute district to include the petitioning school district or districts in which the proposed addition referendum carried by a majority vote.

D. Each school district added to any existing technical and vocational institute district shall automatically be subject to any special levy on taxable property approved for the institute district for the maintenance of facilities and services and for support of bond issues."

Chapter 219 Section 18

Section 18. Section 21-16-15 NMSA 1978 (being Laws 1963, Chapter 108, Section 12) is amended to read:

"21-16-15. DISSOLUTION OF DISTRICTS.--Technical and vocational institute districts may be dissolved in the following manner:

A. a plan for the dissolution of the technical and vocational institute district shall be submitted to the state board of education by a petition signed by ten percent of the qualified electors residing in the district. Upon approval of the plan, the state board of education shall call a special election for the purpose of referring to the voters residing in the district the question of dissolution. Plans for the dissolution of a technical and vocational institute district shall provide for the payment of all district debts and liabilities and for the equitable distribution of all remaining assets to the school districts within the technical and vocational institute district;

B. if a majority of the qualified electors voting at the special election authorizes the dissolution, the board shall proceed with the approved plan. Upon completion of the plan, the board shall submit a full report to the state board of education and the commission on higher education; and

C. upon receipt of the final report of the board, the state board of education, in conjunction with the commission on higher education, shall examine the report to determine whether any outstanding obligations exist and whether the terms of the approved plan have been accomplished. If upon determination by the state board of education no obligations are outstanding and the provisions of the plan have been fulfilled, the state board of education shall formally declare the technical and vocational institute district dissolved."

Chapter 219 Section 19

Section 19. A new section of the Public School Code is enacted to read:

"AREA VOCATIONAL HIGH SCHOOLS.--

A. A local school board, alone or in cooperation with other boards, may develop a plan for the establishment of an area vocational high school on the campus of a post-secondary educational institution to facilitate sharing of facilities. The plan shall be submitted to the state board of education and the commission on higher education for their approval.

B. The state board of education and the commission on higher education may approve a plan for an area vocational high school if the plan adequately provides for:

(1) sufficient financing for the operation of the school, which may include an election for a special levy not to exceed one dollar ($1.00) for each one thousand dollars ($1,000) of net taxable value and that may be in addition to levies authorized by the College District Tax Act;

(2) a broad vocational and technical education program serving a sufficient number of students to achieve economic viability; and

(3) compliance with the state plan for vocational education."

Chapter 219 Section 20

Section 20. TEMPORARY PROVISIONS.--Upon the effective date of this act:

A. those post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 shall be deemed to be organized pursuant to Chapter 21, Article 16 NMSA 1978;

B. all personnel, money, appropriations, records, equipment and other property acquired by the post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 prior to the effective date of this act shall be deemed transferred to the respective technical and vocational institution deemed to be organized pursuant to Chapter 21, Article 16 NMSA 1978 on the effective date of this act and held by that technical and vocational institute until such institute is dissolved pursuant to the procedures of the Technical and Vocational Institute Act;

C. all taxes levied to pay for any principal and interest on bonds of the area vocational schools in addition to taxes levied for operating, maintaining and providing facilities for area vocational schools shall continue in effect until such levy is disapproved pursuant to the procedures set out in the Technical and Vocational Institute Act;

D. all existing contracts and agreements in effect as to the area vocational schools shall be binding and effective as to their successor institutions deemed organized pursuant to the Technical and Vocational Institute Act; and

E. all references in law to the area vocational schools organized pursuant to Chapter 21, Article 17 NMSA 1978 existing before the effective date of this act shall be construed to be references to technical and vocational institutes organized pursuant to Chapter 21, Article 16 NMSA 1978 after the effective date of this act.

Chapter 219 Section 21

Section 21. REPEAL.--Sections 21-14-11, 21-15-1 through 21-15-3, 21-16-5, 21-16-9, 21-16-11.1, 21-16-18 and 21-17-1 through 21-17-17 NMSA 1978 (being Laws 1963, Chapter 162, Section 9, Laws 1967, Chapter 66, Sections 1, 2 and 4, Laws 1963, Chapter 108, Section 5, Laws 1968, Chapter 59, Section 2, Laws 1993, Chapter 28, Section 1 and Laws 1993, Chapter 114, Section 1, Laws 1964, (1st S.S.) Chapter 12, Section 3, Laws 1967, Chapter 177, Sections 1 through 4, Laws 1988, Chapter 34, Section 1, Laws 1967, Chapter 177, Sections 5 and 6, Laws 1996, Chapter 71, Section 7, Laws 1973, Chapter 325, Section 2, Laws 1967, Chapter 177, Sections 8, 10, 11 and 13 through 15 and Laws 1972, Chapter 29, Section 2, as amended) are repealed.

Chapter 219 Section 22

Section 22. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE EDUCATION COMMITTEE

SUBSTITUTE FOR HOUSE BILL 299

CHAPTER 220

RELATING TO THE PROCUREMENT CODE; PROVIDING EXEMPTIONS FROM CERTAIN REQUIREMENTS OF THE PROCUREMENT CODE FOR CERTAIN DESIGN AND BUILD PROJECT DELIVERY SYSTEMS COSTING LESS THAN TWO HUNDRED THOUSAND DOLLARS ($200,000).

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

Chapter 220 Section 1

Section 1. Section 13-1-111 NMSA 1978 (being Laws 1984, Chapter 65, Section 84, as amended) is amended to read:

"13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR USE.--Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978."

Chapter 220 Section 2

Section 2. Section 13-1-119.1 NMSA 1978 (being Laws 1997, Chapter 171, Section 5) is amended to read:

"13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN AND BUILD PROJECTS AUTHORIZED.--

A. Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project with a maximum allowable construction cost of more than ten million dollars ($10,000,000). The determination shall be issued only after the state purchasing or central purchasing office has taken into consideration the following criteria, which shall

be used as the minimum basis in determining when to use the design and build process:

(1) the extent to which the project requirements have been or can be adequately defined;

(2) time constraints for delivery of the project;

(3) the capability and experience of potential teams with the design and build process;

(4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and

(5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

B. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.

C. Except as provided in Subsections F and G of this section, for each proposed state or local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:

(1) during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short listed in accordance with technical and qualifications-based criteria; and

(2) during phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest ranked firm.

D. Except as provided in Subsections F and G of this section, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected

professional associations and contractors, shall promulgate regulations applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.

E. A state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.

F. The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and the services procured for the project if:

(1) the maximum allowable construction cost of the project is two hundred thousand dollars ($200,000) or less; and

(2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.

G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978."

HOUSE BILL 391, AS AMENDED

CHAPTER 221

RELATING TO THE EDUCATION TRUST ACT; PROVIDING THAT PROCEEDS OF A COLLEGE INVESTMENT AGREEMENT OR PREPAID TUITION CONTRACT MAY BE USED AT ADDITIONAL INSTITUTIONS OF HIGHER EDUCATION; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Chapter 221 Section 1

Section 1. Section 21-21K-2 NMSA 1978 (being Laws 1997, Chapter 259, Section 2) is amended to read:

"21-21K-2. DEFINITIONS.--As used in the Education Trust Act

A. "beneficiary" means a person who is entitled to receive benefits under a college investment agreement or a prepaid tuition contract;

B. "board" means the education trust board;

C. "commission" means the commission on higher education;

D. "college investment agreement" means an agreement entered into by the board and an investor, pursuant to the provisions of the Education Trust Act, to defray the costs of attendance of a beneficiary at an institution of higher education;

E. "council" means the state investment council;

F. "fund" means the education trust fund;

G. "institution of higher education" means a state public post-secondary educational institution as defined in Section 6-17-1.1 NMSA 1978, a branch college, an independent community college, a technical and vocational institute or, if approved by the board, another public or private post-secondary educational institution located in this state or any other state;

H. "investor" means a person who has entered into a college investment agreement with the board;

I. "prepaid tuition contract" means a contract entered into by the board and a purchaser, pursuant to the provisions of the Education Trust Act, to provide for the payment of higher education tuition and required fees of a beneficiary; and

J. "purchaser" means a person who is obligated to make payments under a prepaid tuition contract."

Chapter 221 Section 2

Section 2. Section 21-21K-3 NMSA 1978 (being Laws 1997, Chapter 259, Section 3) is amended to read:

"21-21K-3. EDUCATION TRUST FUND--CREATION.--

A. The "education trust fund" is created in the state treasury. The board shall deposit all money received pursuant to college investment agreements and prepaid tuition contracts into the fund. Money in the fund shall consist of appropriations, investments, payments, gifts, bequests and donations. All money invested in the fund is appropriated to the board. Money in the fund shall not revert to the general fund at the end of the fiscal year. The board shall account for each payment from an investor or purchaser on behalf of a beneficiary pursuant to a college investment agreement or prepaid tuition contract. The board shall provide that all money in the fund shall be invested either by the state investment officer according to rules promulgated by the council, subject to the approval of the board, or by a private investment advisor, approved by the council,

pursuant to a contract between the board and the investment advisor. The board shall review investments made pursuant to this subsection at least quarterly.

B. Expenditures from the fund shall be for payments to institutions of higher education on behalf of beneficiaries or for refunds, in accordance with the provisions of the Education Trust Act, and for costs of administering that act.

C. In no event shall any liability of, or contractual obligation incurred by, the program established pursuant to the provisions of the Education Trust Act obligate or encumber any of the state's land grant permanent funds, the severance tax permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to fulfill the terms of any college investment agreement or prepaid tuition contract out of any source other than the education trust fund."

Chapter 221 Section 3

Section 3. Section 21-21K-5 NMSA 1978 (being Laws 1997, Chapter 259, Section 5) is amended to read:

"21-21K-5. COLLEGE INVESTMENT AGREEMENT.--

A. An investor may enter into a college investment agreement with the board under which the investor agrees to make investments into the fund from time to time for the purpose of defraying the costs of attendance billed by institutions of higher education. An investor may enter into a college investment agreement on behalf of any beneficiary under the age of nineteen. The board shall adopt a form of the college investment agreement to be used by the board and investors.

B. The beneficiary under a college investment agreement must be younger than nineteen years of age at the time the investor enters into the agreement and must be:

(1) a resident of this state at the time the investor enters into the agreement; or

(2) a nonresident who is the child of a parent who is a resident of this state at the time that parent enters into the agreement.

C. The board shall provide for the direct payment of principal, investment earnings and capital appreciation accrued pursuant to a college investment agreement to the institution of higher education that the beneficiary actually attends.

D. The board may require a reasonable period of residence in this state, together with other related criteria, for a beneficiary or an investor.

E. A college investment agreement may be terminated by the investor at any time. The investor may modify the college investment agreement to designate a new beneficiary

instead of the original beneficiary if the new beneficiary meets the requirements of the original beneficiary on the date the designation is changed and if the original beneficiary:

(1) dies;

(2) is not admitted to an institution of higher education following proper application;

(3) elects not to attend an institution of higher education or, if attending, elects to discontinue higher education; or

(4) for any other circumstance approved by the board, does not exercise his rights under the college investment agreement.

F. The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated pursuant to the provisions of this section. The balance of the accrued investment earnings and capital appreciation less the amount refunded and administrative costs shall be credited to the fund.

G. The board shall establish a refund policy if a beneficiary receives additional student financial aid.

H. A college investment agreement terminates on the tenth anniversary of the date the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active-duty member of the United States armed services.

I. Gifts and bequests to the fund may be made in the name of a specific beneficiary or in the name of the fund in general. Gifts and bequests given for the benefit of a specific beneficiary shall be credited to that beneficiary, and gifts and bequests given to the fund in general shall be credited equally to each beneficiary of a college investment agreement.

J. Principal paid into the fund, together with accrued investment earnings and capital appreciation, shall be excluded from any calculation of a beneficiary's state student financial aid eligibility.

K. The board shall annually notify each investor of the status of the education trust fund."

Chapter 221 Section 4

Section 4. Section 21-21K-6 NMSA 1978 (being Laws 1997, Chapter 259, Section 6) is amended to read:

"21-21K-6. PREPAID HIGHER EDUCATION TUITION PROGRAM--RULES.--

A. The board may promulgate rules in order to establish a prepaid higher education tuition program. Prior to the establishment of the program, the board will contract for a thorough feasibility study of the proposed prepaid higher education tuition program, including an actuarial analysis of the assumptions underlying the proposed program, and report to the appropriate interim committee of the legislature. The report shall include a recommendation from the board regarding whether it is feasible to proceed with the adoption of the proposed program based on the findings of the feasibility study.

B. The rules regarding the prepaid higher education tuition program shall specify at least the following:

(1) that prepaid tuition contracts, once paid, will cover all tuition and required fees of state public institutions of higher education;

(2) that payments for prepaid tuition contracts may be made either in a lump sum or in installments;

(3) that the prepaid tuition contracts shall include at least the following:

(a) provisions that allow purchasers to choose from payment plans that pay the tuition and required fees for institutions of higher education;

(b) provisions that allow for rollover of prepaid higher education tuition benefits from one plan to another and that provide that benefits may be used at any institution of higher education;

(c) penalties for termination of the contract or default on any of the contract's terms or conditions; and

(d) provisions that allow purchasers to change or switch beneficiaries;

(4) that beneficiaries must meet certain minimum eligibility requirements as determined by the board;

(5) that the board shall consider at least the following variables when setting contract prices:

(a) the amount and estimated rate of increase of tuition and fees at institutions of higher education;

(b) estimated investment returns;

(c) estimated administrative costs; and

(d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(6) that gifts or bequests may be made to the fund, either on behalf of a beneficiary or to the fund generally;

(7) how and when institutions of higher education become eligible to participate in the program;

(8) that benefits under a prepaid tuition contract are excluded from any calculation of a beneficiary's state student financial aid eligibility; and

(9) that the board shall annually provide for audited statements and actuarial studies on the condition of the fund."

Chapter 221 Section 5

Section 5. Section 21-21K-7 NMSA 1978 (being Laws 1997, Chapter 259, Section 7) is amended to read:

"21-21K-7. REPORTS.--

A. The board shall annually submit to the governor and to the appropriate interim legislative committee a report including:

(1) the board's fiscal transactions during the preceding fiscal year;

(2) the market and book value of the fund as of the end of the preceding fiscal year;

(3) the asset allocations of the fund expressed in percentages of stocks, fixed income securities, cash or other financial assets;

(4) the rate of return on the investment of the fund's assets during the preceding fiscal year;

(5) an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded; and

(6) complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education.

B. The board shall make the report described by Subsection A available to purchasers of prepaid tuition contracts and investments under college investment agreements."

HOUSE BILL 464, AS AMENDED

CHAPTER 222

RELATING TO MOTOR VEHICLES; AUTHORIZING OPTIONAL EIGHT-YEAR TERMS FOR THE ISSUANCE OF DRIVER'S LICENSES AND IDENTIFICATION CARDS; PRESCRIBING FEES; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

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

Chapter 222 Section 1

Section 1. Section 66-5-21 NMSA 1978 (being Laws 1978, Chapter 35, Section 243, as amended) is amended to read:

"66-5-21. EXPIRATION OF LICENSE--FOUR-YEAR ISSUANCE PERIOD--EIGHT-YEAR ISSUANCE PERIOD.--

A. Except as provided in Subsection B of this section, Section 66-5-19 NMSA 1978 and Section 66-5-67 NMSA 1978, all driver's licenses shall be issued for a period of four years and each license shall expire thirty days after the applicant's birthday in the fourth year after the effective date of the license. A license issued pursuant to Section 66-5-19 NMSA 1978 shall expire thirty days after the applicant's birthday in the year in which the license expires. Each license is renewable within ninety days prior to its expiration or at an earlier date approved by the department. The fee for the license shall be as provided in Section 66-5-44 NMSA 1978. The department may provide for renewal by mail of a driver's license issued pursuant to the provisions of this subsection, pursuant to rules adopted by the department and may require an examination upon renewal of the driver's license.

B. At the option of an applicant, a driver's license may be issued for a period of eight years, provided that the applicant:

(1) pays the amount required for a driver's license issued for a term of eight years;

(2) otherwise qualifies for a four-year driver's license; and

(3) will not reach the age of seventy-five during the last four years of the eight-year license period.

C. A driver's license issued pursuant to the provisions of Subsection B of this section shall expire thirty days after the applicant's birthday in the eighth year after the effective date of the license."

Chapter 222 Section 2

Section 2. Section 66-5-44 NMSA 1978 (being Laws 1978, Chapter 35, Section 266, as amended) is amended to read:

"66-5-44. LICENSES AND PERMITS--DURATION AND FEE--APPROPRIATION.--

A. There shall be paid to the department a fee of ten dollars ($10.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of twenty dollars ($20.00) shall be paid to the department. Each license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. For each permit and instruction permit, there shall be paid to the department a fee of two dollars ($2.00). The term for each permit shall be as provided in Sections 66-5-8 and 66-5-9 NMSA 1978.

C. The director with the approval of the governor may increase the amount of the fees provided for in this section by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced driver's license system; provided that for a driver's license issued for an eight-year period, the amount of the fees shall be twice the amount charged for other driver's licenses. The additional amounts collected pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing.

D. There shall be paid to the department a driver safety fee of three dollars ($3.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of six dollars ($6.00) shall be paid to the department. The fee shall be distributed to each school district for the purpose of providing defensive driving instruction through the state equalization guarantee distribution made annually pursuant to the general appropriation act."

Chapter 222 Section 3

Section 3. Section 66-5-67 NMSA 1978 (being Laws 1989, Chapter 14, Section 16, as amended) is amended to read:

"66-5-67. EXPIRATION AND RENEWAL--STAGGERED LICENSING DURING IMPLEMENTATION PERIOD.--

A. Except as provided in Subsection C of this section, a commercial driver's license issued pursuant to the provisions of the New Mexico Commercial Driver's License Act shall expire thirty days after the applicant's birthday in the fourth year after the effective date of the license.

B. The license is renewable within ninety days prior to its expiration or at an earlier date as approved by the secretary.

C. At the option of an applicant, a commercial driver's license may be issued for a period of eight years, provided that the applicant:

(1) pays the amount required for a commercial driver's license issued for a term of eight years;

(2) otherwise qualifies for a four-year commercial driver's license; and

(3) will not reach the age of seventy-five during the last four years of the eight-year license period.

D. A driver's license issued pursuant to the provisions of Subsection C of this section shall expire thirty days after the applicant's birthday in the eighth year after the effective date of the license."

Chapter 222 Section 4

Section 4. Section 66-5-403 NMSA 1978 (being Laws 1973, Chapter 269, Section 3) is amended to read:

"66-5-403. EXPIRATION OF IDENTIFICATION CARDS--DURATION.--

A. Except as provided in Subsection B of this section, every identification card shall be issued for a period not to exceed four years and shall expire on the last day of the month of the identified person's birth in the fourth year after the effective date of the identification card. The identification card may be renewed within ninety days prior to its expiration.

B. At the option of the applicant for an identification card, a card may be issued for a period of eight years, provided that the applicant pays the amount required for an identification card issued for a term of eight years. An identification card issued pursuant to the provisions of this subsection shall expire on the last day of the month of the applicant's birth in the eighth year after the effective date of the identification card. The identification card may be renewed within ninety days prior to its expiration."

Chapter 222 Section 5

Section 5. Section 66-5-408 NMSA 1978 (being Laws 1978, Chapter 35, Section 335, as amended) is amended to read:

"66-5-408. FEES.--

A. Upon application for an identification card with a four-year term, there shall be paid to the department a fee of five dollars ($5.00). Upon application for an identification card with an eight-year term, there shall be paid to the department a fee of ten dollars ($10.00). A fee shall not be charged to an applicant for an identification card if the applicant is at least seventy-five years of age.

B. The department with the approval of the governor may increase the amount of the identification card fee by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced licensing system; provided that for an identification card issued for an eight-year period, the amount of the fee shall be twice the amount charged

for other identification cards. The additional amounts collected pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing."

Chapter 222 Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 515

CHAPTER 223

RELATING TO TAXATION; AMENDING THE TAXATION AND REVENUE DEPARTMENT ACT TO AUTHORIZE THE SECRETARY OF TAXATION AND REVENUE TO ENTER INTO CERTAIN COOPERATIVE AGREEMENTS WITH SANTA ANA PUEBLO AND LAGUNA PUEBLO; AMENDING THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO PROVIDE FOR TAX CREDITS.

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

Chapter 223 Section 1

Section 1. Section 9-11-12.1 NMSA 1978 (being Laws 1997, Chapter 64, Section 1) is amended to read:

"9-11-12.1. COOPERATIVE AGREEMENTS WITH SANTA CLARA PUEBLO, SANTA ANA PUEBLO AND LAGUNA PUEBLO.--

A. The secretary may enter into cooperative agreements with Santa Clara pueblo, Santa Ana pueblo and Laguna pueblo for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of gross receipts tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of the pueblo in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and regulations and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due the pueblo and for the receipt of money collected by the pueblo for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the pueblo,

taxpayers or transactions that are subject only to the taxing authority of this state, and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or the pueblo to tax persons or transactions that federal law prohibits that government from taxing, or as authorizing a state or pueblo court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the pueblo. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or the pueblo that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

E. Nothing in an agreement entered into with Santa Clara pueblo pursuant to this section shall apply to a taxable transaction subject to the taxing authority of a municipality pursuant to a local option gross receipts tax act or distribution to a municipality from gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978, except that such agreement shall apply to such taxable transactions, and related distributions, reported from business locations on Santa Clara pueblo land annexed by a municipality after January 1, 1997."

Chapter 223 Section 2

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"CREDIT--GROSS RECEIPTS TAX--TAX PAID TO SANTA ANA PUEBLO OR LAGUNA PUEBLO.--

A. If on a taxable transaction taking place on Santa Ana pueblo land or on Laguna pueblo land a qualifying gross receipts, sales or similar tax has been levied by the pueblo, the amount of the pueblo tax may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same transaction. The amount of the credit shall be equal to the lesser of seventy-five percent of the tax imposed by the pueblo on the receipts from the transaction or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the receipts from the same transaction. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of the gross receipts tax and local option

gross receipts taxes and against the amount of distribution of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by the pueblo shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the pueblo;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the pueblo;

(4) provides a credit against the pueblo tax equal to the lesser of twenty-five percent of the tax imposed by the pueblo on the receipts from the transactions or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transactions; and

(5) is subject to a cooperative agreement between the pueblo and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

C. For purposes of the tax credit allowed by this section, "Santa Ana pueblo land" means all land located within the exterior boundaries of the Santa Ana reservation or pueblo grant and all land held by the United States in trust for Santa Ana pueblo, and "Laguna pueblo land" means all land located within the exterior boundaries of the Laguna reservation or pueblo grant and all land held by the United States in trust for Laguna pueblo".

Chapter 223 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 530

CHAPTER 224

RELATING TO LOTTERY TUITION FUND SCHOLARSHIPS; EXTENDING SCHOLARSHIP ELIGIBILITY TO CERTAIN ARMED FORCES VETERANS.

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

Chapter 224 Section 1

Section 1. Section 21-1-4.3 NMSA 1978 (being Laws 1996, Chapter 71, Section 3) is amended to read:

"21-1-4.3. TUITION SCHOLARSHIPS AUTHORIZED--CERTAIN EDUCATIONAL INSTITUTIONS.--

A. To the extent that funds are made available by the legislature from the lottery tuition fund, the boards of regents of New Mexico state university, New Mexico institute of mining and technology, eastern New Mexico university, western New Mexico university, the university of New Mexico, New Mexico highlands university and northern New Mexico state school shall award tuition scholarships for qualified resident students attending their respective institutions and branches of those institutions.

B. Except as authorized in Subsection C of this section, the tuition scholarships authorized in this section shall apply only to full-time resident students who, immediately upon completion of a high school curriculum at a public or accredited private New Mexico high school or upon receiving a graduate equivalent diploma, are accepted for entrance to and attend one of the state educational institutions set forth in this section or one of the branches of those institutions. Each tuition scholarship shall be awarded for up to four consecutive years beginning the second semester of the recipient's first year of enrollment, provided that the recipient has maintained residency in New Mexico and maintained a grade point average of 2.5 or higher on a 4.0 scale during his first semester of full-time enrollment.

C. The tuition scholarships authorized in this section shall also apply to full-time resident students who, immediately upon completion of a high school curriculum at a public or accredited private New Mexico high school or upon receiving a graduate equivalent diploma, attend a two-year public post-secondary educational institution in New Mexico and who, upon the completion of that curriculum or at the end of two years, whichever is sooner, transfer to one of the post-secondary state educational institutions set forth in this section. Those students shall be eligible for a tuition scholarship for two consecutive years, provided that those students maintain residency in New Mexico, maintain a grade point average of 2.5 or higher on a 4.0 scale and attend the institution full time during the regular academic year.

D. The tuition scholarships authorized in this section shall also apply to full-time resident students who:

(1) within one hundred twenty days of completion of a high school curriculum at a public or accredited private New Mexico high school, or of receiving a graduate equivalent diploma, begin service in the United States armed forces; and

(2) within one hundred twenty days of completion of honorable service or medical discharge from the service are accepted for entrance to and attend one of the state educational institutions set forth in this section.

E. The commission on higher education shall prepare guidelines setting forth explicit student continuing eligibility criteria and guidelines for administration of the tuition scholarship program. Guidelines shall be distributed to the board of regents of each institution to enable a uniform availability of the resident student tuition scholarships."

HOUSE BILL 736

CHAPTER 225

RELATING TO PUBLIC SCHOOLS; ENACTING THE QUALIFIED SCHOOL BONDS ACT; PROVIDING THAT CERTAIN BONDS OF THE STATE OR ITS POLITICAL SUBDIVISIONS MAY QUALIFY AS QUALIFIED ZONE ACADEMY BONDS UNDER THE INTERNAL REVENUE CODE OF 1986; PROVIDING A TAX CREDIT FOR CERTAIN TAXPAYERS WHO HOLD QUALIFIED SCHOOL BONDS; DECLARING AN EMERGENCY.

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

Chapter 225 Section 1

Section 1. SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Qualified School Bonds Act".

Chapter 225 Section 2

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the condition of public school facilities has a direct effect on the safety of teachers and students and on the ability of students to learn;

(2) public schools in rapidly growing urban areas of New Mexico and public schools in sparsely populated rural areas are unable to meet the capital needs for modernization of existing school facilities to meet the growing school-age population in New Mexico under present funding authorizations;

(3) additional funding options are necessary to meet the needs for teacher training to improve student achievement levels and to meet the needs of the work place by providing sufficient student training in the use of advanced technology;

(4) encouraging active community participation and private sector contributions to the public schools will enhance learning opportunities for New Mexico students;

(5) authorizing additional forms of financing for school modernization and construction will permit eligible taxpayers to take advantage of tax credits not currently available to bondholders and will increase the market options for state and local bonds;

(6) encouraging active community participation in the development of resources to build and modernize schools, to enhance educational technology and to enhance teacher training is essential to the success of students in the twenty-first century; and

(7) authorizing additional alternative procedures for the sale of bonds will allow New Mexico public schools and eligible taxpayers to participate in available tax credits and to leverage additional funds for the improvement of public school facilities.

B. The purpose of the Qualified School Bonds Act is to implement a state program that allows eligible taxpayers to take advantage of available tax credits by expanding the incentives to purchase and hold bonds and thereby increasing the financing alternatives for modernization and rehabilitation of public school facilities and enhancing teacher training.

Chapter 225 Section 3

Section 3. DEFINITIONS.--As used in the Qualified School Bonds Act:

A. "allocation" means New Mexico's allocation of the national zone academy bond limitation pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986;

B. "council" means the public school capital outlay council;

C. "eligible taxpayer" means an entity that qualifies as an eligible taxpayer under Section 1397E(d)(6) of the Internal Revenue Code of 1986 and includes a bank, insurance company or corporation actively engaged in the business of lending money;

D. "qualified contribution" means a contribution meeting the requirements of Section 1397E(d)(2) of the Internal Revenue Code of 1986, from a private entity to the qualifying school and includes:

(1) equipment for use in the qualifying school, including state-of-the-art technology and vocational equipment;

(2) technical assistance in developing curriculum or in training teachers in order to promote appropriate market-driven technology in the classroom;

(3) services of employees as volunteer mentors;

(4) internships, field trips or other educational opportunities outside the qualifying school for students; and

(5) any other property or service specified by the governing body of the qualifying school;

E. "qualified school bond" means a bond issued by the state or a political subdivision of the state that meets all of the requirements of Section 4 of the Qualified School Bonds Act and the requirements for a qualified zone academy bond pursuant to Section 1397E(d)(1) of the Internal Revenue Code of 1986;

F. "qualified purpose" means a purpose of a bond issue that meets the requirements of Section 1397E(d)(5) of the Internal Revenue Code of 1986 and Article 9, Section 11 of the constitution of New Mexico; and

G. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements for a qualified zone academy pursuant to Section 1397E(d)(4) of the Internal Revenue Code of 1986.

Chapter 225 Section 4

Section 4. QUALIFIED SCHOOL BONDS--DESIGNATION--TERMS-- SALE.--

A. The state or a political subdivision of the state that has been authorized to issue bonds may designate all or any part of the bonds as qualified school bonds if:

(1) at least ninety-five percent of the proceeds from the sale of the proposed qualified school bonds are to be used for a qualified purpose at a qualifying school within the jurisdiction of the state or political subdivision;

(2) the state or the political subdivision has the written approval of the governing body of the qualifying school to issue the proposed qualified school bonds;

(3) the governing body of the qualifying school has written commitments from private entities for qualified contributions having a present value of not less than ten percent of the value of the proceeds from the sale of the proposed qualified school bonds; and

(4) the council has reserved to the qualifying school an amount of the allocation equal to the proceeds from the sale of the proposed qualified school bonds.

B. Notwithstanding any law requiring bonds to be sold at a public sale, qualified school bonds may be sold at a private sale to eligible taxpayers.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school bonds shall not be issued for a term longer than the term fixed pursuant to Section 1397E(d)(3) of the Internal Revenue Code of 1986 for qualified zone academy bonds issued during the month that the qualified school bonds are issued.

D. Qualified school bonds shall not bear interest.

Chapter 225 Section 5

Section 5. PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL--ALLOCATION.--

A. The aggregate face amount of all qualified school bonds issued in a calendar year shall not exceed the allocation for that year.

B. The council is designated the state education agency pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986 and is responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a political subdivision desires to designate bonds as qualified school bonds, it shall, by July 1 of the calendar year in which the bonds are to be issued, submit an application for reservation of an allocation to the council. The application shall include evidence that the requirements of Paragraphs (1), (2) and (3) of Subsection A of Section 4 of the Qualified School Bonds Act have been satisfied.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school bonds designated and issued in that year, the excess shall be carried forward and included in the allocation for the subsequent year.

E. In the event the face amount of all proposed qualified school bonds for a calendar year exceeds the allocation, the council shall ratably apportion the allocation among the state and political subdivisions that have timely filed valid applications for that year.

Chapter 225 Section 6

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

HOUSE BILL 737, AS AMENDED

SIGNED April 6, 1999

CHAPTER 226

RELATING TO TAXATION; AMENDING THE COUNTY AND MUNICIPAL GASOLINE TAX ACT; ALLOWING USE OF GASOLINE TAX FOR NON-TRANSIT ROUTE ROAD PROJECTS AND AS A REVENUE STREAM FOR COUNTY OR MUNICIPAL BONDS.

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

Chapter 226 Section 1

Section 1. Section 7-24A-3 NMSA 1978 (being Laws 1978, Chapter 182, Section 3, as amended) is amended to read:

"7-24A-3. USE OF PROCEEDS.--

A. The proceeds of a county or municipal gasoline tax shall be used for bridge and road projects or public transportation related trails and for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the Municipal Transit Law or as provided in the County and Municipal Gasoline Tax Act, for operation of a vehicle emission inspection program or for road, street or highway construction, repair or maintenance in the county or municipality. The proceeds of a county or municipal gasoline tax may be pledged for the payment of bonds issued pursuant to the County and Municipal Gasoline Tax Act. A county or municipality may engage in the business of transportation of passengers and property within the political subdivision by whatever means it may decide and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of public transportation.

B. A governing body may enact ordinances and resolutions and promulgate rules as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered.

C. Any county or municipality engaging in the business of transportation may extend any system of transportation to points outside its boundaries where necessary and incidental to furnishing efficient transportation to points within the county or municipality.

D. A governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to the rules, time tables and other requirements established by the governing body.

E. Any county or municipality may furnish transportation service to areas located outside its boundaries, provided that prior contracts have been entered into with the county or municipality in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

F. The power of eminent domain is granted to a participating county or municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit or a vehicle emission inspection program to be exercised in the manner provided by law.

G. A county or municipality, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function that a private enterprise operating a public transit facility could do or perform for revenue.

H. A governing body may spend any public funds to pay the costs of operation of public transit or a vehicle emission inspection program if revenues of the system prove to be insufficient.

I. A county or municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies or the state or any of its officers or agencies or any combination of agencies, departments or officers of both the United States and the state for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit; to accept any loans, grants or payments from any of these agencies; and to make any commitments or assume any obligations required by any of these agencies as a condition of receiving the benefits thereof."

Chapter 226 Section 2

Section 2. Section 7-24A-14 NMSA 1978 (being Laws 1978, Chapter 182, Section 14, as amended) is amended to read:

"7-24A-14. BOND ORDINANCE.--

A. The governing body may adopt an ordinance providing for issuance of bonds to enable the county or municipality to acquire land, buildings, buses or other equipment required for public transit, a vehicle emission inspection program or for road, street or highway construction, repair or maintenance or for refunding bonds previously issued for such purpose or any such purposes.

B. The bonds are payable solely from a pledge of:

(1) gross income derived by the county or municipality from the transit facilities or vehicle emission inspection facilities financed with the proceeds and other transit facilities not so financed; provided that when gross revenues are so pledged, the county or municipality may apply to the payment of the expense of maintaining and operating the transit facilities, the gross revenues of which are so pledged, the county's or municipality's revenues derived from sources other than the proceeds of ad valorem taxes and may, in the proceedings authorizing the issue of bonds, covenant and agree to apply to the payment of the maintenance and operation expenses so much of the revenues as may be necessary for such purposes or as may be specified in the proceedings;

(2) income derived from franchises granted by the governing body of a county or municipality;

(3) contributions, grants or other financial assistance from the state or federal government or any other source;

(4) county or municipal gasoline tax revenue; or

(5) any one or a combination of these sources.

C. The ordinance is irrepealable as long as any indebtedness on the bonds is unpaid by the county or municipality."

Chapter 226 Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 750, AS AMENDED

CHAPTER 227

RELATING TO MOTOR VEHICLES; PROVIDING FOR PERMANENT REGISTRATION OF CERTAIN TRAILERS; CHANGING REGISTRATION FEES FOR CERTAIN TRAILERS.

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

Chapter 227 Section 1

Section 1. Section 66-3-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 21) is amended to read:

"66-3-1. VEHICLES SUBJECT TO REGISTRATION--EXCEPTIONS.--

A. Every motor vehicle, trailer, semitrailer and pole trailer when driven or moved upon a highway is subject to the registration and certificate of title provisions of the Motor Vehicle Code except:

(1) any such vehicle driven or moved upon a highway in conformance with the provisions of the Motor Vehicle Code relating to manufacturers, dealers, lien-holders or nonresidents;

(2) any such vehicle that is driven or moved upon a highway only for the purpose of crossing the highway from one property to another;

(3) any implement of husbandry that is only incidentally operated or moved upon a highway;

(4) any special mobile equipment;

(5) any vehicle that is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(6) freight trailers if they are:

(a) properly registered in another state;

(b) identified by a proper base registration plate that is properly displayed; and

(c) identified by other registration documents that are in the possession of the operator and exhibited at the request of a police officer; and

(7) freight trailers or utility trailers owned and used by:

(a) a nonresident solely for the transportation of farm products purchased by the nonresident from growers or producers of the farm products and transported in the trailer out of the state;

(b) farmers and ranchers who transport to market only the produce, animals or fowl produced by them or who transport back to their farms and ranches supplies for use thereon; or

(c) persons who transport animals to and from fairs, rodeos or other places, except racetracks, where the animals are exhibited or otherwise take part in performances, in trailers drawn by a motor vehicle or truck of less than ten thousand pounds gross vehicle weight rating bearing a proper registration plate, but in no case shall the owner of an unregistered trailer described in this paragraph perform such uses for hire.

B. No certificate of title need be obtained for any vehicle of a type subject to registration owned by the government of the United States.

C. Every manufactured home shall be subject to the registration and certificate of title provisions of the Motor Vehicle Code, and each manufactured home shall at all times bear a current registration plate."

Chapter 227 Section 2

Section 2. Section 66-3-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 22) is amended to read:

"66-3-2. REGISTRATION--TRAILERS, SEMITRAILERS, POLE TRAILERS AND FREIGHT TRAILERS.--

A. The motor vehicle and motor transportation divisions, according to their appropriate jurisdictions, shall grant permanent registration to freight trailers subject to registration and may grant a permanent registration to utility trailers not used in commerce whose gross vehicle weight is less than six thousand one pounds upon application and payment of the fee required by Section 66-6-3 NMSA 1978. The registration shall expire, however, upon the transfer of title or interest in the vehicle, at which time the vehicle shall be reregistered.

B. In registering trailers, semitrailers and pole trailers, the motor vehicle and motor transportation divisions may require such information and documents and may make such tests and investigations as they deem necessary and practicable to determine or to verify the empty weights and gross vehicle weights and to ensure that the vehicles may be safely and legally operated upon the highways of this state."

Chapter 227 Section 3

Section 3. Section 66-6-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 338, as amended) is amended to read:

"66-6-3. TRAILERS--REGISTRATION FEES.--

A. For the registration of freight trailers and utility trailers, the following fees shall be collected:

(1) for the permanent registration or reregistration of freight trailers, ten dollars ($10.00);

(2) for the annual registration of each utility trailer not permanently registered, five dollars ($5.00) plus one dollar ($1.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds actual empty weight; except that in the case of travel trailers, actual empty weight shall be one-half of the gross factory shipping weight or, if gross factory shipping weight is not available, then actual empty weight shall be one-half of actual gross vehicle weight; and

(3) for the permanent registration of utility trailers not used in commerce that have a gross vehicle weight of less than six thousand one pounds, twenty-five dollars ($25.00) plus five dollars ($5.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds actual empty weight; except that in the case of travel trailers, actual empty weight shall be one-half of the gross factory shipping weight or, if gross factory shipping weight is not available, then actual empty weight shall be one-half of actual gross vehicle weight and for the reregistration of such utility trailers upon their sale or transfer, five dollars ($5.00).

B. At the option of the owner of a fleet of fifty or more utility trailers wishing to register them in New Mexico, the motor vehicle division shall issue a registration and registration plate for each trailer in the fleet, the registration and registration plate to expire on the last day of the final month of a five-year period. Registrations and registration plates shall be issued for five years only if the owner of the trailers meets the following requirements:

(1) application is made on forms prescribed by the motor vehicle division and payment of the proper fee is made;

(2) upon the option of the director, presentation is made at the time of registration of a surety bond, certificate of deposit or of other financial security; and

(3) payment is made by the fleet owner of all registration fees due each year prior to the expiration date. If such fees are not paid, all registrations and registration plates in the fleet shall be canceled."

Chapter 227 Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 759, AS AMENDED

CHAPTER 228

RELATING TO COUNTIES; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO PROVIDE A SALARY INCREASE FOR ELECTED COUNTY OFFICIALS.

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

Chapter 228 Section 1

Section 1. Section 4-44-12.3 NMSA 1978 (being Laws 1991, Chapter 91, Section 1) is amended to read:

"4-44-12.3. LEGISLATIVE INTENT--UNIFORM SALARY CHANGES.--

A. The intent of the legislature when enacting salary increases for elected county officials is to provide for equitable salary increases.

B. In accordance with Sections 4-44-3 through 4-44-8 NMSA 1978, the majority of a board of county commissioners may provide for salary increases for elected county officials; provided, however, that no salary increase shall take effect until the first day of

the term of an elected county official who takes office after the date that salary increase is approved."

HOUSE BILL 764, AS AMENDED

CHAPTER 229

RELATING TO PUBLIC ASSISTANCE; AMENDING THE MEDICAID PROVIDER ACT; CHANGING THE NOTICE TO MEDICAID PROVIDERS.

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

Chapter 229 Section 1

Section 1. Section 27-11-3 NMSA 1978 (being Laws 1998, Chapter 30, Section 3) is amended to read:

"27-11-3. REVIEW OF MEDICAID PROVIDERS--CONTRACT REMEDIES--PENALTIES.--

A. Consistent with the terms of any contract between the department and a medicaid provider, the secretary shall have the right to be afforded access to such of the medicaid provider's records and personnel, as well as its subcontracts and that subcontractor's records and personnel, as may be necessary to ensure that the medicaid provider is complying with the terms of its contract with the department.

B. Upon not less than two days' written notice to a medicaid provider the secretary may, consistent with the provisions of the Medicaid Provider Act and rules issued pursuant to that act, carry out an administrative investigation or conduct administrative proceedings to determine whether a medicaid provider has:

(1) materially breached its obligation to furnish medicaid-related services to recipients, or any other duty specified in its contract with the department;

(2) violated any provision of the Public Assistance Act or the Medicaid Provider Act or any rules issued pursuant to those acts;

(3) intentionally or with reckless disregard made any false statement with respect to any report or statement required by the Public Assistance Act or the Medicaid Provider Act, rules issued pursuant to either of those acts or a contract with the department;

(4) intentionally or with reckless disregard advertised or marketed, or attempted to advertise or market, its services to recipients in a manner as to misrepresent its services or capacity for services, or engaged in any deceptive, misleading or unfair practice with respect to advertising or marketing;

(5) hindered or prevented the secretary from performing any duty imposed by the Public Assistance Act, the Human Services Department Act or the Medicaid Provider Act or any rules issued pursuant to those acts; or

(6) fraudulently procured or attempted to procure any benefit from medicaid.

C. Subject to the provisions of Subsection D of this section, after affording a medicaid provider written notice of hearing not less than ten days before the hearing date and an opportunity to be heard, and upon making appropriate administrative findings, the secretary may take any or any combination of the following actions against the provider:

(1) impose an administrative penalty of not more than five thousand dollars ($5,000) for engaging in any practice described in Paragraphs (1) through (6) of Subsection B of this section; provided that each separate occurrence of such practice shall constitute a separate offense;

(2) issue an administrative order requiring the provider to:

(a) cease or modify any specified conduct or practices engaged in by it or its employees, subcontractors or agents;

(b) fulfill its contractual obligations in the manner specified in the order;

(c) provide any service that has been denied;

(d) take steps to provide or arrange for any service that it has agreed or is otherwise obligated to make available; or

(e) enter into and abide by the terms of a binding or nonbinding arbitration proceeding, if agreed to by any opposing party, including the secretary; or

(3) suspend or revoke the contract between the provider and the department pursuant to the terms of that contract.

D. If a contract between the department and a medicaid provider explicitly specifies a dispute resolution mechanism for use in resolving disputes over performance of that contract, the dispute resolution mechanism specified in the contract shall be used to resolve such disputes in lieu of the mechanism set forth in Subsection C of this section.

E. If a medicaid provider's contract so specifies, the medicaid provider shall have the right to seek de novo review in district court of any decision by the secretary regarding a contractual dispute."

Chapter 229 Section 2

Section 2. Section 27-11-4 NMSA 1978 (being Laws 1998, Chapter 30, Section 4) is amended to read:

"27-11-4. RETENTION AND PRODUCTION OF RECORDS.--

A. Medicaid providers and their subcontractors shall retain, for a period of at least six years from the date of creation, all medical and business records that are necessary to verify the:

(1) treatment or care of any recipient for which the medicaid provider received payment from the department to provide that benefit or service;

(2) services or goods provided to any recipient for which the medicaid provider received payment from the department to provide that benefit or service;

(3) amounts paid by medicaid or the medicaid provider on behalf of any recipient; and

(4) records required by medicaid under any contract between the department and the medicaid provider.

B. Upon written request by the department to a medicaid provider or any subcontractor for copies or inspection of records pursuant to the Public Assistance Act, the medicaid provider or subcontractor shall provide the copies or permit the inspection, as applicable within two business days after the date of the request unless the records are held by a subcontractor, agent or satellite office, in which case the records shall be made available within ten business days after the date of the request.

C. Failure to provide copies or to permit inspection of records requested pursuant to this section shall constitute a violation of the Medicaid Provider Act within the meaning of Paragraph (3) of Subsection B of Section 27-11-3 NMSA 1978."

HOUSE BILL 771, AS AMENDED

CHAPTER 230

RELATING TO AUDITS; AMENDING A SECTION OF THE NMSA 1978 TO AMEND AGENCY INVENTORY AMOUNTS TO FEDERAL LAW.

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

Chapter 230 Section 1

Section 1. Section 12-6-10 NMSA 1978 (being Laws 1969, Chapter 68, Section 10, as amended) is amended to read:

"12-6-10. ANNUAL INVENTORY.--

A. The governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment costing more than one thousand dollars ($1,000) and under the control of the governing authority. This inventory shall include all movable chattels and equipment procured through the capital program fund under Section 15-3-23 NMSA 1978, which are assigned to the agency designated by the director of the property control division as the user agency. The inventory shall list the chattels and equipment and the date and cost of acquisition. No agency shall be required to list any item costing one thousand dollars ($1,000) or less. Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files. At the time of the annual audit, the state auditor shall satisfy himself as to the correctness of the inventory by generally accepted auditing procedures.

B. The official or governing authority of each agency is chargeable on his official bond for the chattels and equipment shown in the inventory.

C. The general services department shall establish standards, including a uniform classification system of inventory items, and promulgate regulations concerning the system of inventory accounting for chattels and equipment required to be inventoried, and the governing authority of each agency shall install the system. A museum collection list or catalogue record and a library accession record or shelf list shall constitute the inventories of museum collections and library collections maintained by state agencies and local public bodies.

D. No surety upon the official bond of any officer or employee of any agency shall be released from liability until a complete accounting has been had. All official bonds shall provide coverage of, or be written in a manner to include, inventories."

HOUSE BILL 783

CHAPTER 231

RELATING TO TAXATION; CHANGING A DEFINITION AND AMENDING REQUIREMENTS FOR CERTAIN DEDUCTIONS IN THE GROSS RECEIPTS AND COMPENSATION TAX ACT; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN ENRICHED URANIUM SALES AND SERVICES AND A COMPENSATING TAX DEDUCTION FOR THE VALUE OF EQUIPMENT USED IN ENRICHING URANIUM; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 1998, Chapter 92, Section 4 and by Laws 1998, Chapter 95, Section 1 and also by Laws 1998, Chapter 99, Section 3) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work;

"construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

D. "financial corporation" means any savings and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that "engaging in business" does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

(1) "Gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential; and

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) any national, federal, state, Indian or other governmental unit or subdivision, or any agency, department or instrumentality of any of the foregoing;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling.

"Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

O. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

P. "research and development services" means any activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) the development of a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) the development of new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

Q. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, Special Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department; and

R. "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

Chapter 231 Section 2

Section 2. Section 7-9-45 NMSA 1978 (being Laws 1969, Chapter 144, Section 35, as amended) is amended to read:

"7-9-45. DEDUCTIONS.--

A. In computing the gross receipts tax or governmental gross receipts tax due, only those receipts specified in Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted. Receipts, whether specified once or several times in those sections, may be deducted only once from gross receipts or governmental gross receipts.

B. Receipts that are exempted from the gross receipts tax may not be deducted from gross receipts. Receipts that are deducted from gross receipts may not be exempted from the gross receipts tax.

C. Receipts that are exempted from the governmental gross receipts tax shall not be deducted from governmental gross receipts. Receipts that are deducted from governmental gross receipts shall not be exempted from the governmental gross receipts tax."

Chapter 231 Section 3

Section 3. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTIONS--GROSS RECEIPTS TAX--SALES OF ENRICHED URANIUM AND ENRICHMENT OF URANIUM.--Receipts from selling enriched uranium and from providing the service of enriching uranium may be deducted from gross receipts."

Chapter 231 Section 4

Section 4. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--COMPENSATING TAX--URANIUM ENRICHMENT PLANT EQUIPMENT.--The value of equipment and replacement parts for that equipment may be deducted in computing the compensating tax due if the person uses the equipment and replacement parts to enrich uranium in a uranium enrichment plant."

Chapter 231 Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 787, AS AMENDED

CHAPTER 232

RELATING TO PUBLIC SECURITIES; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 232 Section 1

Section 1. Section 6-14-2 NMSA 1978 (being Laws 1970, Chapter 10, Section 2, as amended) is amended to read:

"6-14-2. DEFINITIONS.--As used in the Public Securities Act:

A. "net effective interest rate" means the interest rate of public securities, compounded semiannually, necessary to discount the scheduled debt service payments of principal and interest to the date of the public securities and to the price paid to the public body for the public securities, excluding any interest accrued to the date of delivery and based upon a year with the same number of days as the number of days for which interest is computed on the public securities;

B. "public body" means this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district, educational institution or any other governmental agency or political subdivision of the state; and

C. "public securities" means any bonds, notes, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special law enacted by the legislature, but does not include bonds, notes, warrants or other obligations issued pursuant to:

(1) the Industrial Revenue Bond Act;

(2) the County Improvement District Act;

(3) Sections 3-33-1 through 3-33-43 NMSA 1978;

(4) the Pollution Control Revenue Bond Act;

(5) the County Pollution Control Revenue Bond Act;

(6) the County Industrial Revenue Bond Act;

(7) the Metropolitan Redevelopment Code;

(8) the Supplemental Municipal Gross Receipts Tax Act;

(9) the Hospital Equipment Loan Act; or

(10) the New Mexico Finance Authority Act."

Chapter 232 Section 2

Section 2. 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. All the bonds shall be sold at public sale.

B. A notice calling for bids for the purchase of the bonds shall be published once at least one week prior to the date of the sale in a newspaper having local circulation. The notice shall specify a place and designate a day and hour subsequent to the date of the publication when bids shall be received and publicly opened for the purchase of the bonds. The notice shall specify the maximum net effective interest rate permitted for the bonds and the maximum discount if a discount is allowed by the governing body and shall require bidders to submit a bid specifying the lowest rate of interest and any premium or discount if allowed by the governing body at, above or below par at which the bidder will purchase the bonds. The bonds shall be sold to the responsible bidder making the best bid determined by the municipal corporation as set forth in the notice, subject to the right of the governing body to reject any and all bids and readvertise. All bids shall be sealed or sent by facsimile or other electronic transmission to the municipal corporation as set forth in the notice. Except for the bid of the state of New Mexico or the United States, if one is received, all bids shall be accompanied by a deposit of not less than two percent of the principal amount of the bonds, either in the form of a financial security bond or in cash or by cashier's or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States, which deposit shall be returned if the bid is not accepted. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond must be issued by an insurance company licensed to issue such a bond in New Mexico. If the successful bidder does not complete the purchase of the bonds within thirty days following the acceptance of his bid or within ten days after the bonds are made ready and are offered by the municipal corporation for delivery, whichever is later, the amount of his deposit shall be forfeited to the municipal corporation issuing the bonds, and, in that event, the governing body may accept the bid of the bidder making the next best bid. If all bids are rejected, the governing body may readvertise the bonds for sale in the same manner as for the original advertisement or sell the bonds at private sale to the state of New Mexico or the United States. If there are two or more equal bids and the bids are the best bids received, the governing body shall determine which bid shall be accepted.

B. Except as provided in this section, bonds to be issued by a municipal corporation for various purposes may be sold and issued as a single combined issue even though they may have been authorized by separate votes at an election or elections. Bonds authorized by any city, town or village for the construction or purchase of a system for supplying water, a sanitary sewer system or a storm sewer system may be combined with each other and sold and issued as a single issue but may not be combined with bonds to be issued for any other purpose that may be subject to the debt limitation of Article 9, Section 13 of the constitution of New Mexico."

Chapter 232 Section 3

Section 3. Section 6-15-9 NMSA 1978 (being Laws 1933, Chapter 114, Section 1, as amended) is amended to read:

"6-15-9. BONDS AUTHORIZED AT ELECTION--TIME LIMIT ON ISSUANCE--EXCEPTIONS.--No bonds shall be issued or sold by any school district, county or municipality after the expiration of three years from the date of the election authorizing the issue, except for the purpose of refunding previous bond issues or in payment of judgments or if the issuance of the bonds has been authorized at a regular election for officers of any such school district, county or municipality or, where authorized by statute, at a special election held for that purpose. The bonds may be sold to the United States or to the state of New Mexico in any case in which the state of New Mexico or the United States has made an offer to purchase the bonds and the offer was accepted prior to the expiration of the three-year period. Any period of time when the validity of bonds or the election therefor is in litigation shall be excluded from the three-year period."

Chapter 232 Section 4

Section 4. Section 6-15-10 NMSA 1978 (being Laws 1933, Chapter 114, Section 2, as amended) is amended to read:

"6-15-10. UNISSUED BONDS AUTHORIZED AT ELECTION--WHEN VOID--EXCEPTIONS.--In all cases where bond issues by the school districts, counties or municipalities have been authorized by special election and the bonds have not been issued and sold within three years from the date of the special election authorizing the proposed issue, the proposed bond issue is void, except where issued for refunding bonded debt or for payment of judgments against the district, county or municipality and, except where the issuance of the bonds has been authorized at a regular election for officers of any school district, county or municipality or, where authorized by statute, at a special election held for those purposes. Such bonds may be sold to the United States or to the state of New Mexico at private sale in any case in which the state of New Mexico or the United States has made an offer to purchase the bonds and the offer was accepted prior to the expiration of the three-year period."

Chapter 232 Section 5

Section 5. Section 6-18-6 NMSA 1978 (being Laws 1983, Chapter 161, Section 6) is amended to read:

"6-18-6. SHORT-TERM BONDS.--A public body may authorize short-term bonds which provide for any or all of the following in or pursuant to the bond legislation:

A. principal maturities may be for any one or more periods of two years or less from the respective dates of issuance;

B. interest may be payable on any one or more dates, or at principal maturity;

C. interest may but need not be represented by coupons;

D. the bonds may be in coupon form, in form registered as to principal or registered as to both principal and interest, or in book entry form, and provision may be made for exchange of one form for another;

E. the bonds may be in form with stated interest or in discount form without stated interest, or a combination thereof;

F. the bond legislation may provide for the renewal or refunding of such bonds, at or before maturity, by the issuance or successive issuance of renewal or refunding bonds under that bond legislation without necessity for further act by the governing body, provided that the maturities of such renewal or refunding bonds shall not exceed two years from their respective dates of issuance. In the bond legislation approved by the governing body, the governing body may authorize or direct one or more officers of the public body to:

(1) fix the interest rate or rates for each issue of bonds and renewal or refunding issues, subject to a maximum rate or rates as a stated interest rate or net effective interest rate, which maximum shall be set forth in such bond legislation or determined from time to time in accordance with a formula, index, data or procedure as provided for in the bond legislation, provided that, whether or not such a formula, index, data or procedure is provided for, bond legislation with respect to indebtedness shall set forth stated maximums of net effective interest rates;

(2) determine the discount for bonds with stated interest and for bonds without stated interest, subject to any limitations thereon provided in the bond legislation;

(3) fix the date of such bonds, which may be stated in such bond legislation as the date or dates of issue and which may be a date on or before the respective date or dates of issuance;

(4) fix the maturity date or dates of such bonds, which shall be within minimum and maximum periods described in such bond legislation; and

(5) designate the denomination of such bonds, subject to minimums and integral multiples of stated amounts provided in such bond legislation;

G. the public body may contract with agents or trustees for services in connection with the issuance, transfer, exchange, registration, record keeping for and the payment of such bonds and matters incidental thereto, and the public body has authority to act under such contracts. Without limiting the generality of the preceding sentence, such contracts may provide:

(1) for the maintenance of a supply of bond forms with the agent or trustee, which forms bear the facsimile of all signatures of officers of the public body necessary for the purpose and, if applicable, the facsimile of the seal of the public body, contain blanks as to owner, date, maturity, denomination, interest rates and original issue discount as appropriate, and provide a form of authentication by the agent or trustee upon issuance;

(2) for the officer or officers of the public body, authorized by the governing body to do so, to direct the agent or trustee with respect to the completion of such blanks and the delivery of the bonds, by oral, electronic or written communication prior to the authentication and delivery of such bonds, and that any such oral or electronic communication thereafter shall be confirmed in writing; and

(3) for the establishment with the agent or trustee of funds, in trust, for payment of the principal of and interest on the bonds and for payments by and on behalf of the public body into such funds, including payments thereto from the proceeds of renewal or refunding bonds;

H. the public body may contract with banks or investment bankers, or others with appropriate capabilities, to provide services, which may be on an exclusive basis, in the placement of the bonds with purchasers, or to purchase the bonds, or both, which contract may provide for all matters incidental thereto and may be a negotiated contract;

I. the public body may covenant, in the bond legislation, to the holders or owners of the bonds and to the trustee, if any, for the benefit of such holders and owners, that it will issue bonds to renew, or fund or refund, the bonds and any accrued interest thereon, at or before maturity to the extent not provided for from money otherwise available for the purpose. In addition to other reductions permitted in the levy of property taxes for principal or interest on indebtedness, reduction may be made to the extent that principal or interest thereon is to be covered by the proceeds of refunding or renewal bonds;

J. in addition to the authority to issue bonds for such purposes under the Public Securities Short-Term Interest Rate Act, the public body may, to the extent not prohibited by the bond legislation, retire or provide for the payment at any time of the bonds authorized under that act by the issuance of bonds under authority of any other law consistent with the maturities and other terms authorized by such laws and without impediment or other effect thereunder by reason of previously having issued the bonds under the Public Securities Short-Term Interest Rate Act, except as stated in Subsection B of Section 6-18-10 NMSA 1978; and

K. the provisions of Section 6-18-7 NMSA 1978 may be used with respect to any bonds issued pursuant to this section."

HOUSE BILL 815

CHAPTER 233

RELATING TO PUBLIC MONEY; AMENDING A SECTION OF THE NMSA 1978 TO AUTHORIZE CERTAIN INVESTMENTS OF PUBLIC MONEY BY MUNICIPALITIES AND COUNTIES.

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

Chapter 233 Section 1

Section 1. Section 6-10-10 NMSA 1978 (being Laws 1933, Chapter 175, Section 4, as amended) is amended to read:

"6-10-10. DEPOSIT AND INVESTMENT OF FUNDS.--

A. Upon the certification or designation of any bank, savings and loan association or credit union whose deposits are insured by an agency of the United States to receive public money on deposit, the state treasurer and county or municipal treasurers who have on hand any public money by virtue of their offices shall make deposit of that money in banks and savings and loan associations, and may make deposit of that money in credit unions whose deposits are insured by an agency of the United States, designated by the authority authorized by law to so designate to receive the deposits of all money thereafter received or collected by the treasurers.

B. County or municipal treasurers may deposit money in one or more accounts with any such bank, savings and loan association or credit union located in their respective counties, subject to limitation on credit union accounts.

C. The state treasurer may deposit money in one or more accounts with any such bank, savings and loan association or credit union, subject to the limitation on credit union accounts.

D. Duplicate receipts or deposit slips shall be taken for each deposit made pursuant to Subsection A, B or C of this section. When deposits are made by the state treasurer, one copy of the receipt or deposit slip shall be retained by the state treasurer and the other copy shall be filed monthly on the first day of each month with the financial control division of the department of finance and administration. When deposits are made by the treasurer or any other authorized person making the deposits for a board of finance of a public or educational institution, one copy of the receipt or deposit slip shall be retained by the treasurer or authorized person so making the deposit and the other copy shall be filed monthly on the first day of each month with that board of finance. When deposits are made by a county or municipal treasurer, one of the duplicate receipts or deposit slips shall be retained by the treasurer so making the deposit and the other copy shall be filed monthly on the first day of each month with the secretary of the board of finance of the county or municipality for which that treasurer is acting.

E. "Deposit", as used in this section, means either investment or deposit and includes share, share certificate and share draft.

F. County or municipal treasurers, by and with the advice and consent of their respective boards of finance charged with the supervision and control of the respective funds, have the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, municipality or school district that is entrusted to their care and custody and all money not immediately necessary for the public uses of the counties, municipalities or school districts not invested or deposited in banks, savings and loan associations or credit unions in:

(1) bonds or negotiable securities of the United States, the state or any county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars ($1,000,000) and has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding; or

(2) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies guaranteed by the United States government.

G. The treasurer of a class A county or the treasurer of a municipality having a population of more than sixty-five thousand according to the most recent federal decennial census and located within a class A county, by and with the advice and consent of the boards of finance charged with the supervision and control of the funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the county or municipality that is entrusted to his care and custody and all money not immediately necessary for the public uses of the county or municipality not invested or deposited in banks, savings and loan associations or credit unions in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in fixed income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars ($100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments;

(2) individual, common or collective trust funds of banks or trust companies that invest in fixed-income securities or debt instruments that are listed in a nationally recognized, broad-market, fixed-income-securities market index; provided that the investment company or manager has total assets under management of at least one hundred million dollars ($100,000,000) and provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(3) shares of pooled investment funds managed by the state investment officer, as provided in Subsection G of Section 6-8-7 NMSA 1978; provided that the board of finance of the county or municipality may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments.

H. A local public body, with the advice and consent of the body charged with the supervision and control of the local public body's respective funds, has the power to invest all sinking funds or money remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of the investor that is entrusted to the local public body's care and custody and all money not immediately necessary for the public uses of the investor and not otherwise invested or deposited in banks, savings and loan associations or credit unions in contracts with banks, savings and loan associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor. The contract shall be fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the contract. The collateral required for investment in the contracts provided for in this subsection shall be shown on the books of the financial institution as being the property of the investor and the designation shall be contemporaneous with the investment. As used in this subsection, "local public body" includes all political subdivisions of the state and agencies, instrumentalities and institutions thereof; provided that home rule municipalities that prior to July 1, 1994 had enacted ordinances authorizing the investment of repurchase agreements may continue investment in repurchase agreements pursuant to those ordinances.

I. The state treasurer, with the advice and consent of the state board of finance, has the power to invest money held in demand deposits and not immediately needed for the operation of state government and money held in the short-term investment fund, except as provided in Section 6-10-10.1 NMSA 1978. The investments shall be made only in securities that are issued by the United States government or by its departments or agencies and are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies sponsored by the United States government.

J. The state treasurer may also invest in contracts for the present purchase and resale at a specified time in the future, not to exceed one year or, in the case of bond proceeds, not to exceed three years, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by obligations of the United States or other securities backed by the United States having a market value of at least one hundred two percent of the amount of the contract.

K. The state treasurer may also invest in contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. No

such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged.

L. The collateral required for either of the forms of investment in Subsection J or K of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis.

M. Neither of the contracts in Subsection J or K of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000).

N. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

(1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) any asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

O. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); or

(2) individual, common or collective trust funds of banks or trust companies that invest in United States fixed income securities or debt instruments authorized pursuant to Subsections I, J and N of this section, provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

P. No public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall be paid out unless there is a contemporaneous transfer of the securities at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis either by

physical delivery or, in the case of uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable third-party safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser."

Chapter 233 Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2000.

HOUSE BILL 816, AS AMENDED

CHAPTER 234

RELATING TO PUBLIC EDUCATION; ESTABLISHING THE STATEWIDE EDUCATIONAL TECHNOLOGY OPPORTUNITY PROGRAM TO PROVIDE LOW-COST, STATE-OF-THE-ART COMPUTERS FOR NEW MEXICO'S CLASSROOMS; DECLARING AN EMERGENCY.

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

Chapter 234 Section 1

Section 1. STATEWIDE EDUCATIONAL TECHNOLOGY OPPORTUNITY PROGRAM--FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) local school districts need increased access to information technologies, extensive professional development and sustained network support to use technology effectively;

(2) the technological needs of New Mexico's individual school children and classrooms are best defined by the teachers and principals who work with them on a day-to-day basis;

(3) New Mexico is fortunate to have high technology laboratories and corporations that have programs to supply low-cost, state-of-the-art central processing units for use in New Mexico classrooms; and

(4) there are large nonprofit programs in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment.

B. The purpose of this act is to establish a statewide educational technology opportunity program for New Mexico's teachers and students by creating a partnership between

private industry, state government and local school districts that will build, distribute and install low-cost, network-ready computers in New Mexico classrooms over the next three years.

Chapter 234 Section 2

Section 2. EDUCATIONAL TECHNOLOGY OPPORTUNITY PROGRAM--DUTIES OF THE STATE DEPARTMENT OF PUBLIC EDUCATION.--

A. The state department of public education shall contract with a nonprofit corporation to administer the statewide educational technology opportunity program. The department shall select a contractor that has a program in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment. In administering the statewide educational technology opportunity program, the contractor, in coordination with the department, shall:

(1) solicit and accept applications for computer assistance from local school teachers through the local school principals;

(2) establish criteria for evaluating applications for computer assistance. The criteria shall include requirements for an established technology plan and an established network infrastructure;

(3) establish a review process involving public and private entities to evaluate each application, determine the amount of computer assistance needed and allocate the available computers to ensure that computer assistance is distributed equitably; and

(4) submit an annual report to the state board of education, the governor and the legislature on the progress of the program, showing the regional distribution of the program, the number of computers distributed and the cost of each computer.

B. Upon the approval of an application for computer assistance, the contractor shall distribute the allocated computers directly to the classroom and teacher. Pursuant to the contract and upon the receipt of an invoice, the state department of public education shall reimburse the contractor for the state portion of the cost of the computer assistance granted.

C. The state department of public education, after consulting with private industry, local school districts and other interested parties, shall promulgate such rules as are necessary to implement the statewide educational technology opportunity program.

Chapter 234 Section 3

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

HOUSE BILL 850, AS AMENDED

SIGNED April 6, 1999

CHAPTER 235

RELATING TO AGRICULTURAL LABORERS; PROVIDING FOR A MINIMUM LENGTH OF SHORT-HANDLED HOES; IMPOSING A CRIMINAL PENALTY.

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

Chapter 235 Section 1

Section 1. MINIMUM LENGTH OF HOE HANDLES.--

A. An employer of agricultural laborers shall not require an employee to use a hoe that has a handle shorter than four feet while performing agricultural labor that includes weeding, thinning or hot-capping in a stooped, kneeling or squatting position for a commercial farming operation.

B. An employer who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. This section does not apply to an employer engaged in the operation of a greenhouse or nursery.

HOUSE BILL 53

CHAPTER 236

RELATING TO ELECTIONS; PROVIDING A WORK SHIFT OPTION FOR PRECINCT BOARD MEMBERS; CHANGING PRECINCT BOARD COMPENSATION CALCULATION.

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

Chapter 236 Section 1

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

"ELECTION DAY WORK SHIFTS--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, at least one election 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 he submits the list of precinct board appointments in accordance with Section 1-2-14 NMSA 1978."

Chapter 236 Section 2

Section 2. 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 seven dollars ($7.00) per hour.

B. Compensation shall be paid within thirty days following the date of election."

Chapter 236 Section 3

Section 3. Section 1-12-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 238, as amended) is amended to read:

"1-12-2. CONDUCT OF ELECTION--PRECINCT BOARD ATTENDANCE.--Precinct board members, excepting those members scheduled to work only the second shift, shall present themselves at the polling place not later than 6:00 a.m. on the date required by law for the election."

HOUSE BILL 175, AS AMENDED

CHAPTER 237

RELATING TO EDUCATION; AMENDING THE INSTRUCTIONAL MATERIAL DISTRIBUTION TO CHANGE THE ADDITIONAL PUPIL COUNT.

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

Chapter 237 Section 1

Section 1. Section 22-15-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 213, as amended) is amended to read:

"22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL MATERIAL.--

A. On or before July 1 of each year, the department of education shall allocate to each school district, state institution or private school not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25.

B. On or before January 15 of each year, the department of education shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed thirty percent of the allocations attributed to each local school district, state institution or adult basic education center may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978. Adult basic education centers may expend up to one hundred percent of their instructional material funds for items that are not on the multiple list.

D. The department of education shall establish procedures for the distribution of funds directly to local school districts, state institutions and adult basic education centers. The department of education shall distribute funds to private schools on a reimbursement basis for instructional material included on the multiple list provided for in Section 22-15-8 NMSA 1978.

E. A school district, state institution or adult basic education center that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department of education for instructional material purchases in subsequent years."

HOUSE BILL 177

CHAPTER 238

RELATING TO CORRECTIONS; REQUIRING INMATES TO EARN MERITORIOUS DEDUCTIONS FROM A TERM OF IMPRISONMENT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 238 Section 1

Section 1. Section 33-2-34 NMSA 1978 (being Laws 1978, Chapter 40, Section 1, as amended) is repealed and a new Section 33-2-34 NMSA 1978 is enacted to read:

"33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS DEDUCTIONS.--

A. To earn meritorious deductions, a prisoner confined in a correctional facility designated by the corrections department must be an active participant in programs recommended for the prisoner by the classification committee and approved by the warden. Meritorious deductions shall not exceed the following amounts:

(1) for a prisoner confined for committing a serious violent offense, up to a maximum of four days per month of time served;

(2) for a prisoner confined for committing a nonviolent offense, up to a maximum of thirty days per month of time served;

(3) for a prisoner confined following revocation of parole for the alleged commission of a new felony offense or for absconding from parole, up to a maximum of four days per month of time served during the parole term following revocation; and

(4) for a prisoner confined following revocation of parole for a reason other than the alleged commission of a new felony offense or absconding from parole, up to a maximum of eight days per month of time served during the parole term following revocation.

B. A prisoner may earn meritorious deductions upon recommendation by the classification committee, based upon the prisoner's active participation in approved programs and the quality of the prisoner's participation in those approved programs. A prisoner may not earn meritorious deductions unless the recommendation of the classification committee is approved by the warden.

C. If a prisoner's active participation in approved programs is interrupted by a lockdown at a correctional facility, he may continue to be awarded meritorious deductions at the rate he was earning meritorious deductions prior to the lockdown, unless the warden determines that the prisoner's conduct contributed to the initiation or continuance of the lockdown.

D. A prisoner confined in a correctional facility designated by the corrections department is eligible for lump-sum meritorious deductions as follows:

(1) for successfully completing an approved vocational, substance abuse or mental health program, one month; except when the prisoner has a demonstrable physical, mental health or developmental disability that prevents the prisoner from successfully earning a general education diploma, in which case the prisoner shall be awarded three months;

(2) for earning a general education diploma, three months;

(3) for earning an associate's degree, four months;

(4) for earning a bachelor's degree, five months;

(5) for earning a graduate qualification, five months; and

(6) for engaging in a heroic act of saving life or property, engaging in extraordinary conduct for the benefit of the state or the public that is at great expense, risk or effort on behalf of the inmate, or engaging in extraordinary conduct far in excess of normal program assignments that demonstrates the prisoner's commitment to rehabilitate himself. The classification committee and the warden may recommend the number of days to be awarded in each case based upon the particular merits but any award shall be determined by the director of the adult institutions division of the corrections department.

E. Lump-sum meritorious deductions, provided in Paragraphs (1) through (6) of Subsection D of this section, may be awarded in addition to the meritorious deductions provided in Subsections A and B of this section. Lump-sum meritorious deductions shall not exceed one year per award and shall not exceed a total of one year for all lump-sum meritorious deductions awarded in any consecutive twelve-month period.

F. A prisoner is not eligible to earn meritorious deductions if the prisoner:

(1) disobeys an order to perform labor, pursuant to Section 33-8-4 NMSA 1978;

(2) is in disciplinary segregation;

(3) is within the first sixty days of receipt by the corrections department; or

(4) is not an active participant in programs recommended and approved for him by the classification committee.

G. The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of death.

H. The corrections department shall promulgate rules to implement the provisions of this section, and the rules shall be matters of public record. A concise summary of the rules shall be provided to each prisoner, and each prisoner shall receive a quarterly statement of the meritorious deductions earned.

I. A New Mexico prisoner confined in a federal or out-of-state correctional facility is eligible to earn meritorious deductions for active participation in programs on the basis of the prisoner's conduct and program reports furnished by that facility to the corrections department. All decisions regarding the award and forfeiture of meritorious deductions

at such facility are subject to final approval by the director of the adult institutions division of the corrections department or his designee.

J. In order to be eligible for meritorious deductions, a prisoner confined in a federal or out-of-state correctional facility designated by the corrections department must actively participate in programs that are available. If a federal or out-of-state correctional facility does not have programs available for a prisoner, the prisoner may be awarded meritorious deductions at the rate the prisoner could have earned meritorious deductions if the prisoner had actively participated in programs.

K. A prisoner confined in a correctional facility in New Mexico that is operated by a private company, pursuant to a contract with the corrections department, is eligible to earn meritorious deductions in the same manner as a prisoner confined in state-run correctional facilities. All decisions regarding the award or forfeiture of meritorious deductions at such facilities are subject to final approval by the director of the adult institutions division of the corrections department or his designee.

L. As used in this section:

(1) "active participant" means a prisoner who has begun, and is regularly engaged in, approved programs;

(2) "program" means work, vocational, educational, substance abuse and mental health programs, approved by the classification committee, that contribute to a prisoner's self-betterment through the development of personal and occupational skills. "Program" does not include recreational activities;

(3) "nonviolent offense" means any offense other than a serious violent offense; and

(4) "serious violent offense" means:

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

(b) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;

(c) third degree aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(d) first degree kidnapping, as provided in Section 30-4-1 NMSA 1978;

(e) first and second degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(f) third degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

(g) first and second degree robbery, as provided in Section 30-16-2 NMSA 1978;

(h) second degree aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(i) shooting at a dwelling or occupied building, as provided in Section 30-3-8 NMSA 1978;

(j) shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;

(k) aggravated battery upon a peace officer, as provided in Section 30-22-25 NMSA 1978;

(l) assault with intent to commit a violent felony upon a peace officer, as provided in Section 30-22-23 NMSA 1978;

(m) aggravated assault upon a peace officer, as provided in Section 30-22-22 NMSA 1978; and

(n) any of the following offenses, when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense for the purpose of this section: 1) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978; 2) fourth degree aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3) third degree assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978; 4) third and fourth degree aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978; 5) second degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as provided in Section 30-6-1 NMSA 1978; 7) first, second and third degree abuse of a child, as provided in Section 30-6-1 NMSA 1978; 8) third degree dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978; 9) third and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 10) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 11) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 12) third degree homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978; and 13) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978."

Chapter 238 Section 2

Section 2. Section 33-2-36 NMSA 1978 (being Laws 1988, Chapter 78, Section 6) is amended to read:

"33-2-36. FORFEITURE OF EARNED MERITORIOUS DEDUCTIONS.--

A. Meritorious deductions earned by a prisoner may be forfeited in an amount up to ninety days for two or more misconduct violations. Meritorious deductions earned by a prisoner may be forfeited in an amount in excess of ninety days for a major conduct violation. Forfeitures of meritorious deductions of up to ninety days shall only proceed upon the recommendation of the classification committee and final approval by the warden. Forfeitures of meritorious deductions in an amount in excess of ninety days

shall only proceed upon the recommendation of the classification committee and the warden and final approval of the director of the adult institutions division of the corrections department. The secretary of corrections may review and revise any decision regarding the forfeiture of meritorious deductions.

B. The provisions of this section also apply to the forfeiture of earned meritorious deductions for a prisoner confined in a:

(1) federal or out-of-state correctional facility; or

(2) correctional facility in New Mexico operated by a private company pursuant to a contract with the corrections department."

Chapter 238 Section 3

Section 3. Section 33-2-37 NMSA 1978 (being Laws 1988, Chapter 78, Section 7) is amended to read:

"33-2-37. RESTORATION OF FORFEITED MERITORIOUS DEDUCTIONS.--

A. Meritorious deductions forfeited under Section 33-2-36 NMSA 1978 may be restored in whole or in part to a prisoner who is exemplary in conduct and work performance for a period of not less than six months following the date of forfeiture. Meritorious deductions may be restored upon recommendation of the classification committee, approval by the warden and final approval by the secretary of corrections.

B. The provisions of this section also apply to the restoration of earned meritorious deductions for a prisoner confined in a:

(1) federal or out-of-state correctional facility; or

(2) correctional facility in New Mexico operated by a private company pursuant to a contract with the corrections department."

Chapter 238 Section 4

Section 4. Section 33-2-38 NMSA 1978 (being Laws 1889, Chapter 76, Section 13, as amended) is amended to read:

"33-2-38. COMPUTATION OF TERM.--A prisoner shall not be discharged from the penitentiary of New Mexico or any other correctional facility until he has served the full term for which he was sentenced. The term shall be computed from and include the day on which his sentence took effect and shall exclude any time the convict may have been at large by reason of escape, unless he is pardoned or otherwise released by legal authority. The provisions of this section shall not be interpreted to deprive a prisoner of

any reduction of time to which he may be entitled pursuant to the provisions of Sections 31-20-11, 31-20-12 and 33-2-34 NMSA 1978."

Chapter 238 Section 5

Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

(2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;

(3) for a second degree felony, nine years imprisonment;

(4) for a third degree felony resulting in the death of a human being, six years imprisonment;

(5) for a third degree felony, three years imprisonment; or

(6) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being, unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony or a second or third degree felony resulting in the death of a human being and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony, fifteen thousand dollars ($15,000);

(2) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars ($12,500);

(3) for a second degree felony, ten thousand dollars ($10,000);

(4) for a third degree felony resulting in the death of a human being, five thousand dollars ($5,000); or

(5) for a third or fourth degree felony, five thousand dollars ($5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the criminal and juvenile justice coordinating council shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the coordinating council access to documents used by the department to determine earned meritorious deductions for prisoners."

Chapter 235 Section 6

Section 6. Section 31-26-4 NMSA 1978 (being Laws 1994, Chapter 144, Section 4) is amended to read:

"31-26-4. VICTIM'S RIGHTS.--A victim shall have the right to:

A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;

B. timely disposition of the case;

C. be reasonably protected from the accused throughout the criminal justice process;

D. notification of court proceedings;

E. attend all public court proceedings the accused has the right to attend;

F. confer with the prosecution;

G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;

I. information about the conviction, sentencing, imprisonment, escape or release of the accused;

J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;

K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and

L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender."

Chapter 238 Section 7

Section 7. REPEAL.--Section 33-8-14 NMSA 1978 (being Laws 1981, Chapter 127, Section 14) is repealed.

Chapter 238 Section 8

Section 8. APPLICABILITY.--The provisions of Sections 1 through 5 and Section 7 of this act apply to persons convicted of a criminal offense committed on or after July 1, 1999. As to persons convicted of a criminal offense committed prior to July 1, 1999, the laws with respect to meritorious deductions in effect at the time the offense was committed shall apply.

Chapter 238 Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 227, AS AMENDED

CHAPTER 239

RELATING TO HEALTH; AMENDING PROVISIONS OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE REGARDING ADMINISTRATION OF PSYCHOTROPIC MEDICATIONS; DECLARING AN EMERGENCY.

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

Chapter 239 Section 1

Section 1. Section 43-1-15 NMSA 1978 (being Laws 1977, Chapter 279, Section 14, as amended by Laws 1993, Chapter 240, Section 8 and also by Laws 1993, Chapter 240, Section 8) is amended to read:

"43-1-15. CONSENT TO TREATMENT--ADULT CLIENTS.--

A. No psychotropic medication, psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed. A client shall not be presumed to be incapable of giving consent for administration of psychotropic medications solely because he has been involuntarily committed to a treatment facility or is awaiting a hearing on whether he should be involuntarily committed to a treatment facility.

B. If the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the client is incapable of informed consent, he may petition the court for the appointment of a treatment guardian to make a substitute decision for the client. This

petition shall be served on the client and his attorney. A hearing on the petition shall be held within three court days. At the hearing, the client shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses. If after the hearing the court finds that the client is not capable of making his own treatment decisions, the court may order the appointment of a treatment guardian. The treatment guardian shall make a decision on behalf of the client whether to accept treatment, depending on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making his decision, the treatment guardian shall consult with the client and consider his expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. He shall give consideration to any previous decisions made by the client in similar circumstances when the client was able to make treatment decisions. If a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. Such an order may authorize any peace officer to take the client into custody and to transport him to an evaluation facility and may authorize the facility forcibly to administer treatment. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the client's attorney and interested friends or relatives of the client as he deems appropriate in making his decision. If the client, physician or other professional wishes to appeal the decision of the treatment guardian, he may do so, filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the client shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interest of the client.

C. When the court appoints a treatment guardian, it shall specify the length of time during which he may exercise his powers, up to a maximum period of one year. If at the end of his guardianship period the treatment guardian believes that the client is still incapable of making his own treatment decisions, he shall petition the court for reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

D. If during a period of a treatment guardian's power the treatment guardian, the client, the treatment provider, a member of the client's family or the client's attorney believes that the client has regained competence to make his own treatment decisions, he shall petition the court for a termination of the treatment guardianship. If the court finds the client is capable of making his own treatment decisions, it shall terminate the power of the treatment guardian and restore to the client the power to make his own treatment decisions.

E. A treatment guardian shall only have those powers enumerated in the code, unless the treatment guardian has also been appointed a guardian under the Uniform Probate

Code pursuant to provisions of Section 45-5-303 NMSA 1978. Any person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.

F. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm which would occur while the provisions of Subsection B of this section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm. Upon the sworn application of the treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a treatment guardian is appointed, if the requirements of Subsection B of this section for appointment of a treatment guardian are in the process of being satisfied in a timely manner."

Chapter 239 Section 2

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

HOUSE BILL 418, AS AMENDED

SIGNED April 7, 1999

CHAPTER 240

RELATING TO LICENSING; AMENDING AND REPEALING SECTIONS OF THE MASSAGE THERAPY PRACTICE ACT.

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

Chapter 240 Section 1

Section 1. Section 61-12C-1 NMSA 1978 (being Laws 1991, Chapter 147, Section 1, as amended) is amended to read:

"61-12C-1. SHORT TITLE.--Chapter 61, Article 12C NMSA 1978 may be cited as the "Massage Therapy Practice Act"."

Chapter 240 Section 2

Section 2. Section 61-12C-2 NMSA 1978 (being Laws 1991, Chapter 147, Section 2) is amended to read:

"61-12C-2. LEGISLATIVE PURPOSE.--In the interest of public health, safety and welfare and to protect the public from unlawful, improper and incompetent practice of massage therapy, it is necessary to regulate that practice."

Chapter 240 Section 3

Section 3. Section 61-12C-3 NMSA 1978 (being Laws 1991, Chapter 147, Section 3, as amended) is amended to read:

"61-12C-3. DEFINITIONS.--As used in the Massage Therapy Practice Act:

A. "board" means the massage therapy board;

B. "department" means the regulation and licensing department;

C. "jurisprudence" means the statutes and rules of the state pertaining to the practice of massage therapy;

D. "massage therapist" means a person licensed to practice massage therapy pursuant to the Massage Therapy Practice Act;

E. "massage therapy" means the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain; it is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms. "Massage therapy" does not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law; and

F. "massage therapy school" means a facility providing an educational program in massage therapy that is registered with the board."

Chapter 240 Section 4

Section 4. Section 61-12C-5 NMSA 1978 (being Laws 1991, Chapter 147, Section 5, as amended) is amended to read:

"61-12C-5. LICENSE OR REGISTRATION REQUIRED.--

A. A person shall not provide or offer to provide massage therapy for compensation unless that person is a massage therapist.

B. A person shall not use the title of or represent himself to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate the person is a massage therapist unless he is a massage therapist.

C. A person shall not provide or offer to provide massage therapy training as a massage therapy instructor unless he is registered as a massage therapy instructor pursuant to Section 61-12C-9 NMSA 1978.

D. A person shall not maintain, manage or operate a massage therapy school offering education, instruction or training in massage therapy unless the school is a registered massage therapy school."

Chapter 240 Section 5

Section 5. Section 61-12C-6 NMSA 1978 (being Laws 1991, Chapter 147, Section 6, as amended) is amended to read:

"61-12C-6. EXEMPTIONS.--Nothing in the Massage Therapy Practice Act shall be construed to prevent:

A. qualified members of other recognized professions that are licensed or regulated under New Mexico law from rendering services within the scope of their license or regulation, provided they do not represent themselves as massage therapists;

B. students from rendering massage therapy services within the course of study of an approved massage therapy school and under the supervision of a licensed massage therapy instructor;

C. visiting massage therapy instructors from another state or territory of the United States, the District of Columbia or any foreign nation from teaching massage therapy; provided the instructor is duly licensed or registered, if required, and is qualified in his place of residence for the practice of massage therapy. The board shall establish by rule the duration of stay for a visiting massage therapy instructor; and

D. sobadores, Hispanic traditional healers, Native American healers, reflexology, which is limited to hands, feet and ears or other healers who do not manipulate the soft tissues for therapeutic purposes from practicing those skills. Healers who use these practices but apply for a license or registration pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of that act.

Chapter 240 Section 6

Section 6. Section 61-12C-7 NMSA 1978 (being Laws 1991, Chapter 147, Section 7, as amended) is amended to read:

"61-12C-7. BOARD CREATED--MEMBERSHIP.--

A. The "massage therapy board" is created. The board is administratively attached to the department.

B. The board consists of five members who are New Mexico residents. Members of the board shall be appointed by the governor to terms of four years. The terms shall be staggered, and the governor shall make appointments of two two-year terms, two three-year terms and one four-year term, if necessary to produce staggered terms. Three members of the board shall be massage therapists, each with at least five years of massage therapy practice and who are actively engaged in the practice of massage therapy during their tenure as members. Two members of the board shall be public members who have not been licensed and have no financial interest, direct or indirect, in the profession of massage therapy.

C. Each member of the board shall hold office until a successor has been appointed and qualified.

D. No board member shall serve more than two full consecutive terms.

E. The board shall elect annually a chair and other officers as it deems necessary. The board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be held in accordance with the Open Meetings Act. Three members, at least one of whom must be a public member, shall constitute a quorum.

F. A board member may be recommended for removal as a member of the board for failing to attend, after proper notice, three consecutive board meetings.

G. Members of the board shall be reimbursed as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Chapter 240 Section 7

Section 7. Section 61-12C-8 NMSA 1978 (being Laws 1991, Chapter 147, Section 8, as amended) is amended to read:

"61-12C-8. BOARD POWERS.--The board has the power to:

A. adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Massage Therapy Practice Act, in accordance with the provisions of the Uniform Licensing Act;

B. provide for the evaluation of the qualifications of applicants for licensure or registration under the Massage Therapy Practice Act;

C. provide for the issuance of licenses or registrations to applicants who meet the requirements of the Massage Therapy Practice Act;

D. provide for the inspection, when required, of the business premises of any licensee or registrant during regular business hours;

E. establish minimum training and educational standards for licensure as a massage therapist or registration as a massage therapy instructor;

F. pursuant to the Uniform Licensing Act, conduct hearings on charges against applicants, licensees or registrants and take actions described in Section 61-1-3 NMSA 1978;

G. bring an action for injunctive relief in district court seeking to enjoin a person from violating the provisions of the Massage Therapy Practice Act;

H. issue cease and desist orders to persons violating the provisions of the Massage Therapy Practice Act or any rule adopted by the board pursuant to that act;

I. adopt an annual budget;

J. adopt a code of professional conduct;

K. provide for the investigation of complaints against licensees; and

L. publish at least annually combined or separate lists of licensed massage therapists, registered massage therapy instructors and registered massage therapy schools."

Chapter 240 Section 8

Section 8. Section 61-12C-9 NMSA 1978 (being Laws 1991, Chapter 147, Section 9, as amended) is amended to read:

"61-12C-9. REQUIREMENTS FOR LICENSURE OF MASSAGE THERAPISTS AND REGISTRATION OF MASSAGE THERAPY INSTRUCTORS.--

A. The board shall issue a license to practice massage therapy to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) has reached the age of majority;

(2) has completed all educational requirements established by the board; and

(3) has completed at least six hundred fifty hours in length that includes at least five hundred hours of massage therapy instruction.

B. The board shall register as a massage therapy instructor any applicant who:

(1) is currently licensed as a massage therapist; and

(2) has completed the educational and experience requirements established by the board, which requirements shall meet minimum standards of training and curriculum for massage therapy instructors established by the board.

C. An initial license or registration issued pursuant to this section may be for a period of up to two years pursuant to board rule."

Chapter 240 Section 9

Section 9. Section 61-12C-10 NMSA 1978 (being Laws 1991, Chapter 147, Section 10, as amended) is amended to read:

"61-12C-10. REQUIREMENTS FOR REGISTRATION OF MASSAGE THERAPY SCHOOLS.--

A. The board shall establish by rule procedures for the registration of massage therapy schools and shall register massage therapy schools that meet the requirements of the Massage Therapy Practice Act and rules adopted by the board pursuant to that act.

B. The board shall establish minimum standards of training and curriculum for massage therapy schools. Massage therapy schools shall provide an educational program that includes a minimum of six hundred fifty hours of training and shall include instruction in:

(1) anatomy;

(2) physiology;

(3) massage therapy;

(4) business;

(5) hydrotherapy;

(6) first aid;

(7) cardiopulmonary resuscitation; and

(8) professional ethics.

Chapter 240 Section 10

Section 10. Section 61-12C-11 NMSA 1978 (being Laws 1991, Chapter 147, Section 11, as amended) is amended to read:

"61-12C-11. DISPLAY OF LICENSE OR REGISTRATION.--A massage therapy license or registration issued by the board shall at all times be posted in a conspicuous place in the holder's principal place of business."

Chapter 240 Section 11

Section 11. Section 61-12C-13 NMSA 1978 (being Laws 1991, Chapter 147, Section 13, as amended) is amended to read:

"61-12C-13. EXAMINATIONS.--

A. The board shall establish by rule the required examinations and the procedures for taking and retaking them. The board shall determine the passing grade on examinations.

B. The board shall specify by rule the general areas of competency to be covered by examinations for licensure and ensure that the examinations measure adequately both an applicant's competency and knowledge of related statutory requirements. Professional testing services may be utilized for the examinations.

Chapter 240 Section 12

Section 12. Section 61-12C-14 NMSA 1978 (being Laws 1991, Chapter 147, Section 14, as amended) is amended to read:

"61-12C-14. TEMPORARY LICENSE.--

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in the practice of massage therapy if the applicant meets all the requirements for licensure except completion of the examination.

B. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied.

C. No more than one temporary license may be issued to an individual, and no temporary license shall be issued to an applicant who has previously failed the examinations."

Chapter 240 Section 13

Section 13. Section 61-12C-16 NMSA 1978 (being Laws 1991, Chapter 147, Section 16, as amended) is amended to read:

"61-12C-16. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant, provided that he possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation and has met educational and examination requirements equal to or exceeding those established pursuant to the Massage Therapy Practice Act."

Chapter 240 Section 14

Section 14. Section 61-12C-17 NMSA 1978 (being Laws 1991, Chapter 147, Section 17, as amended) is amended to read:

"61-12C-17. LICENSE OR REGISTRATION RENEWAL--CONTINUING EDUCATION.--

A. Massage therapy licenses and massage therapy instructor registrations shall expire biennially. Massage therapy school registrations shall expire annually. Expiration dates shall be established by rule.

B. The board may establish continuing educational requirements as a condition of the renewal of massage therapy licenses and massage therapy instructor registrations.

C. A license or registration shall be renewed by submitting a renewal application on a form provided by the board.

D. A sixty-day grace period shall be allowed each license or registration holder after the end of the renewal period, during which time a license or registration may be renewed upon payment of the renewal fee and a late fee as prescribed by the board."

Chapter 240 Section 15

Section 15. Section 61-12C-18 NMSA 1978 (being Laws 1991, Chapter 147, Section 18) is amended to read:

"61-12C-18. INACTIVE STATUS.--

A. A massage therapy license or massage therapy instructor registration not renewed at the end of the sixty-day grace period shall be placed on inactive status for a period not to exceed two years. At the end of two years, if the license or registration has not been reactivated, it shall automatically expire.

B. If within a period of two years from the date the license or registration was placed on inactive status the massage therapist or massage therapy instructor wishes to resume

practice, the board shall be notified in writing, and, upon proof of completion of any continuing education or refresher courses prescribed by rule of the board and payment of an amount set by the board in lieu of all lapsed renewal fees, the license or registration shall be restored in full."

Chapter 240 Section 16

Section 16. Section 61-12C-20 NMSA 1978 (being Laws 1991, Chapter 147, Section 20, as amended) is amended to read:

"61-12C-20. LICENSE FEES.--The board shall establish by rule a schedule of reasonable fees for applications, examinations, licenses, registrations, inspections, renewals, penalties, reactivation and necessary administrative fees,

but no single fee shall exceed five hundred dollars ($500). All fees collected shall be deposited in the massage therapy fund."

Chapter 240 Section 17

Section 17. Section 61-12C-21 NMSA 1978 (being Laws 1991, Chapter 147, Section 21, as amended) is amended to read:

"61-12C-21. ADVERTISING.--A massage therapist, massage therapist instructor or massage therapy school licensed or registered pursuant to the Massage Therapy Practice Act shall include the number of the license or registration, and the designation as a "massage therapist", "registered massage therapy instructor" or "registered massage therapy school" in any advertisement of massage therapy services as established by board rule."

Chapter 240 Section 18

Section 18. Section 61-12C-24 NMSA 1978 (being Laws 1991, Chapter 147, Section 24, as amended) is amended to read:

"61-12C-24. DENIAL, SUSPENSION, REVOCATION AND REINSTATEMENT OF LICENSES.--

A. Pursuant to the Uniform Licensing Act, the board may take disciplinary action against a person licensed or registered pursuant to the Massage Therapy Practice Act.

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation;

(2) attempted to use as his own the license or registration of another;

(3) allowed the use of his license or registration by another;

(4) has been adjudicated as mentally incompetent by regularly constituted authorities;

(5) has been convicted of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;

(6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;

(7) is habitually or excessively using controlled substances or alcohol;

(8) is guilty of false, deceptive or misleading advertising;

(9) is guilty of aiding, assisting or advertising any unlicensed or unregistered person in the practice of massage therapy;

(10) is grossly negligent or incompetent in the practice of massage therapy;

(11) has had a license or registration to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction; or

(12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act.

C. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

D. The board may establish the guidelines for the disposition of disciplinary cases. Guidelines may include but shall not be limited to minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license or registration.

E. License and registration holders who have been found culpable and sanctioned by the board shall be responsible for the payments of all costs of the disciplinary proceedings."

Chapter 240 Section 19

Section 19. Section 61-12C-27 NMSA 1978 (being Laws 1993, Chapter 173, Section 20) is amended to read:

"61-12C-27. OFFENSES--CRIMINAL PENALTIES.--A person who does any of the following is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978:

A. violates a provision of the Massage Therapy Practice Act or rules adopted pursuant to that act;

B. renders or attempts to render massage therapy services, instruction as a massage therapy instructor or instruction as a massage therapy school without the required current valid license or registration issued by the board; or

C. advertises or uses a designation, diploma or certificate implying that he is a massage therapist, massage therapy instructor or massage therapy school unless he holds a current valid license or registration issued by the board."

Chapter 240 Section 20

Section 20. REPEAL.--Sections 61-12C-4 and 61-12C-6 NMSA 1978 (being Laws 1991, Chapter 147, Sections 4 and 6, as amended) are repealed.

Chapter 240 Section 21

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

SUBSTITUTE FOR HOUSE BILL HB 423, AS AMENDED

CHAPTER 241

RELATING TO THE DISPOSITION OF BODIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 PERTAINING TO CREMATION AND BURIAL OF INDIGENTS AND UNCLAIMED DECEDENTS.

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

Chapter 241 Section 1

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.--

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 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.

C. The body shall be embalmed according to regulations 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 B 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, he shall issue his 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 241 Section 2

Section 2. Section 24-12-2 NMSA 1978 (being Laws 1973, Chapter 354, Section 2, as amended) is amended to read:

"24-12-2. DISPOSITION OF UNCLAIMED BODY--TRANSMISSION OF RECORDS OF INSTITUTION.--

A. Upon the issuance of his certificate that the remains are unclaimed, the medical investigator shall retain the body for use only for medical education or shall certify that the body is unnecessary or unsuited for medical education and release it to the state, county or municipal officials having charge or control of the body for burial. The state, county or municipal officials shall have the body removed for disposition within three weeks from the date on which the medical investigator released the body.

B. If the body is retained for use in medical education, the facility or person receiving the body for that use shall pay the costs of preservation and transportation of the body and shall keep a permanent record of bodies received.

C. If a deceased person was an inmate of a public institution, the institution shall transmit, upon request of the medical investigator, a brief medical history of the unclaimed dead person for purposes of identification and permanent record. The records shall be open to inspection by any state or county official or district attorney."

Chapter 241 Section 3

Section 3. A new Section 24-12A-3 NMSA 1978 is enacted to read:

"24-12A-3. UNCLAIMED BODIES AND BODIES OF INDIGENT PERSONS--CREMATION PERMITTED.--The body of an unclaimed decedent or an indigent person, the disposition of which is the responsibility of the county pursuant to the provisions of Chapter 24, Article 13 NMSA 1978, may be cremated upon the order of the county official responsible for ensuring the disposition of the body or upon the order of any other government official authorized to order the cremation. Absent a showing of bad faith or malicious intent, the official ordering the cremation and the person or establishment carrying out the cremation shall be immune from liability related to the cremation."

Chapter 241 Section 4

Section 4. Section 24-13-1 NMSA 1978 (being Laws 1939, Chapter 224, Section 1) is amended to read:

"24-13-1. BURIAL OR CREMATION OF UNCLAIMED DECEDENTS AND OF INDIGENTS.--For the purposes of Chapter 24, Article 13 NMSA 1978, a dead person whose body has not been claimed by a friend, relative or other interested person assuming the responsibility for and expense of disposition shall be considered an unclaimed decedent. It is the duty of the board of county commissioners of each county in this state to cause to be decently interred or cremated the body of any unclaimed decedent or indigent person. The county shall ensure that the body is buried or cremated no later than thirty days after a determination has been made that the body has not been claimed, but no less than two weeks after death. If the body is cremated, the county shall ensure that the cremated remains are retained and stored for no less than two years in a manner that allows for identification of the remains. After the expiration of two years the cremated remains may be disposed of, provided the county retains a record of the place and manner of disposition for not less than five years after such disposition."

Chapter 241 Section 5

Section 5. Section 24-13-2 NMSA 1978 (being Laws 1939, Chapter 224, Section 2) is amended to read:

"24-13-2. PERSONS DEEMED INDIGENT.--A deceased person shall be considered to be an indigent for purposes of Chapter 24, Article 13 NMSA 1978 if his estate is insufficient to cover the cost of burial or cremation."

Chapter 241 Section 6

Section 6. Section 24-13-3 NMSA 1978 (being Laws 1939, Chapter 224, Section 3, as amended) is amended to read:

"24-13-3. EXPENSES FOR BURIAL OR CREMATION.--If the unclaimed decedent had known assets or property of sufficient value to defray the expenses of cremation or

burial, invoices for the expenses shall be forwarded to such person or official authorized by law to be appointed administrator of the estate of the decedent, and such person or official shall pay the expenses out of the decedent's estate. To the extent that the deceased person is indigent, the burial or cremation expenses shall be borne by the county of residence of the deceased person. If the county of residence of the deceased person is not known, the burial or cremation expenses shall be borne by the county in which the body was found. The burial or cremation expenses may be paid by the county out of the general fund in an amount up to six hundred dollars ($600) for the burial or cremation of any adult or minor."

Chapter 241 Section 7

Section 7. Section 24-13-4 NMSA 1978 (being Laws 1939, Chapter 224, Section 4, as amended) is amended to read:

"24-13-4. BURIAL AFTER INVESTIGATION--COST OF OPENING AND CLOSING GRAVE.--The board of county commissioners after proper investigation shall cause any deceased indigent or unclaimed decedent to be decently interred or cremated. The cost to be paid by the county of opening and closing a grave shall not exceed six hundred dollars ($600), which sum shall be in addition to the sums enumerated in Section 24-13-3 NMSA 1978."

Chapter 241 Section 8

Section 8. Section 24-13-5 NMSA 1978 (being Laws 1939, Chapter 224, Section 5) is amended to read:

"24-13-5. PAYMENT OF BURIAL OR CREMATION EXPENSES-- COMMISSIONERS' LIABILITY.--The board of county commissioners of any county within this state may authorize payment for the burial or cremation of an indigent person, as defined in Section 24-13-2 NMSA 1978 or of an unclaimed decedent, as defined in Section 24-13-1 NMSA 1978. All available assets of the deceased shall be used to reimburse the county for the cost of burial or cremation. Should the county be required to pay expenses for burial or cremation of an unclaimed decedent who has left an estate, the estate shall reimburse the county for those expenses. The county commissioners shall be liable either personally or officially to the county they represent in double the amount they have paid toward the burial or cremation of a person other than as authorized by this section."

Chapter 241 Section 9

Section 9. Section 24-13-6 NMSA 1978 (being Laws 1939, Chapter 224, Section 6) is amended to read:

"24-13-6. MONEY FROM RELATIVES--DUTY OF FUNERAL DIRECTOR.--Should any funeral director or other person allowed by law to conduct the business of a funeral

director accept money from the relatives or friend of a deceased person whom the board of county commissioners has determined to be an indigent or an unclaimed decedent, the funeral director shall immediately notify the board of county commissioners of the payment or offer for payment, and the board of county commissioners shall not thereafter pay for the burial or cremation involved, or, if the board of county commissioners has already paid for the burial or cremation, the funeral director shall immediately refund the money paid to him by the board of county commissioners for the burial or cremation."

Chapter 241 Section 10

Section 10. Section 24-13-7 NMSA 1978 (being Laws 1939, Chapter 224, Section 7) is amended to read:

"24-13-7. FAILURE TO NOTIFY--FUNERAL DIRECTOR'S LIABILITY.--If any funeral director or other person authorized by law to conduct the business of a funeral director receives or contracts to receive any money or thing of value from relatives or friends of a deceased alleged indigent or unclaimed decedent whose burial or cremation expenses are paid or to be paid by the board of county commissioners and fails to notify the board of county commissioners of that fact, the funeral director or other person authorized by law to conduct the business of a funeral director shall be liable to the county in an amount double the amount paid or to be paid by the board of county commissioners of that county."

HOUSE BILL 548, AS AMENDED

CHAPTER 242

RELATING TO DOMESTIC RELATIONS; EXPANDING THE FACTORS THAT A COURT SHALL CONSIDER WHEN DETERMINING JOINT CUSTODY; INCLUDING DOMESTIC VIOLENCE AS A CONSIDERATION.

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

Chapter 242 Section 1

Section 1. Section 40-4-9.1 NMSA 1978 (being Laws 1986, Chapter 41, Section 1) is amended to read:

"40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION--PARENTING PLAN.--

A. There shall be a presumption that joint custody is in the best interests of a child in an initial custody determination. An award of joint custody does not imply an equal division of financial responsibility for the child. Joint custody shall not be awarded as a substitute

for an existing custody arrangement unless there has been a substantial and material change in circumstances since the entry of the prior custody order or decree, which change affects the welfare of the child such that joint custody is presently in the best interests of the child. With respect to any proceeding in which it is proposed that joint custody be terminated, the court shall not terminate joint custody unless there has been a substantial and material change in circumstances affecting the welfare of the child, since entry of the joint custody order, such that joint custody is no longer in the best interests of the child.

B. In determining whether a joint custody order is in the best interests of the child, in addition to the factors provided in Section 40-4-9 NMSA 1978, the court shall consider the following factors:

(1) whether the child has established a close relationship with each parent;

(2) whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;

(3) whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;

(4) whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such involvement and influence from both parents;

(5) whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and right to privacy;

(6) the suitability of a parenting plan for the implementation of joint custody, preferably, although not necessarily, one arrived at through parental agreement;

(7) geographic distance between the parents' residences;

(8) willingness or ability of the parents to communicate, cooperate or agree on issues regarding the child's needs; and

(9) whether a judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse against the child, a parent of the child or other household member. If a determination is made that domestic abuse has occurred, the court shall set forth findings that the custody or visitation ordered by the court adequately protects the child, the abused parent or other household member.

C. In any proceeding in which the custody of a child is at issue, the court shall not prefer one parent as a custodian solely because of gender.

D. In any case in which the parents agree to a form of custody, the court should award custody consistent with the agreement unless the court determines that such agreement is not in the best interests of the child.

E. In making an order of joint custody, the court may specify the circumstances, if any, under which the consent of both legal custodians is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.

F. When joint custody is awarded, the court shall approve a parenting plan for the implementation of the prospective custody arrangement prior to the award of joint custody. The parenting plan shall include a division of a child's time and care into periods of responsibility for each parent. It may also include:

(1) statements regarding the child's religion, education, child care, recreational activities and medical and dental care;

(2) designation of specific decision-making responsibilities;

(3) methods of communicating information about the child, transporting the child, exchanging care for the child and maintaining telephone and mail contact between parent and child;

(4) procedures for future decision making, including procedures for dispute resolution; and

(5) other statements regarding the welfare of the child or designed to clarify and facilitate parenting under joint custody arrangements.

In a case where joint custody is not agreed to or necessary aspects of the parenting plan are contested, the parties shall each submit parenting plans. The court may accept the plan proposed by either party or it may combine or revise these plans as it deems necessary in the child's best interests. The time of filing of parenting plans shall be set by local rule. A plan adopted by the court shall be entered as an order of the court.

G. Where custody is contested, the court shall refer that issue to mediation if feasible. The court may also use auxiliary services such as professional evaluation by application of Rule 706 of the New Mexico rules of evidence or Rule 53 of the rules of civil procedure for the district courts.

H. Notwithstanding any other provisions of law, access to records and information pertaining to a minor child, including medical, dental and school records, shall not be

denied to a parent because that parent is not the child's physical custodial parent or because that parent is not a joint custodial parent.

I. Whenever a request for joint custody is granted or denied, the court shall state in its decision its basis for granting or denying the request for joint custody. A statement that joint custody is or is not in the best interests of the child is not sufficient to meet the requirements of this subsection.

J. An award of joint custody means that:

(1) each parent shall have significant, well-defined periods of responsibility for the child;

(2) each parent shall have, and be allowed and expected to carry out, responsibility for the child's financial, physical, emotional and developmental needs during that parent's periods of responsibility;

(3) the parents shall consult with each other on major decisions involving the child before implementing those decisions; that is, neither parent shall make a decision or take an action which results in a major change in a child's life until the matter has been discussed with the other parent and the parents agree. If the parents, after discussion, cannot agree and if one parent wishes to effect a major change while the other does not wish the major change to occur, then no change shall occur until the issue has been resolved as provided in this subsection;

(4) the following guidelines apply to major changes in a child's life:

(a) if either parent plans to change his home city or state of residence, he shall provide to the other parent thirty days' notice in writing stating the date and destination of move;

(b) the religious denomination and religious activities, or lack thereof, which were being practiced during the marriage should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(c) both parents shall have access to school records, teachers and activities. The type of education, public or private, which was in place during the marriage should continue, whenever possible, and school districts should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(d) both parents shall have access to medical and dental treatment providers and records. Each parent has authority to make emergency medical decisions. Neither parent may contract for major elective medical or dental treatment unless both parents agree or it has been otherwise resolved as provided in this subsection; and

(e) both parents may attend the child's public activities and both parents should know the necessary schedules. Whatever recreational activities the child participated in during the marriage should continue with the child's agreement, regardless of which of

the parents has physical custody. Also, neither parent may enroll the child in a new recreational activity unless the parties agree or it has been otherwise resolved as provided in this subsection; and

(5) decisions regarding major changes in a child's life may be decided by:

(a) agreement between the joint custodial parents;

(b) requiring that the parents seek family counseling, conciliation or mediation service to assist in resolving their differences;

(c) agreement by the parents to submit the dispute to binding arbitration;

(d) allocating ultimate responsibility for a particular major decision area to one legal custodian;

(e) terminating joint custody and awarding sole custody to one person;

(f) reference to a master pursuant to Rule 53 of the Rules of Civil Procedure for the District Courts; or

(g) the district court.

K. When any person other than a natural or adoptive parent seeks custody of a child, no such person shall be awarded custody absent a showing of unfitness of the natural or adoptive parent.

L. As used in this section:

(1) "child" means a person under the age of eighteen;

(2) "custody" means the authority and responsibility to make major decisions in a child's best interests in the areas of residence, medical and dental treatment, education or child care, religion and recreation;

(3) "domestic abuse" means any incident by a household member against another household member resulting in:

(a) physical harm;

(b) severe emotional distress;

(c) a threat causing imminent fear of physical harm by any household member;

(d) criminal trespass;

(e) criminal damage to property;

(f) stalking or aggravated stalking, as provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

(g) harassment, as provided in Section 30-3A-2 NMSA 1978;

(4) "joint custody" means an order of the court awarding custody of a child to two parents. Joint custody does not imply an equal division of the child's time between the parents or an equal division of financial responsibility for the child;

(5) "parent" means a natural parent, adoptive parent or person who is acting as a parent who has or shares legal custody of a child or who claims a right to have or share legal custody;

(6) "parenting plan" means a document submitted for approval of the court setting forth the responsibilities of each parent individually and the parents jointly in a joint custody arrangement;

(7) "period of responsibility" means a specified period of time during which a parent is responsible for providing for a child's physical, developmental and emotional needs, including the decision making required in daily living. Specified periods of responsibility shall not be changed in an instance or more permanently except by the methods of decision making described under Subsection L of this section;

(8) "sole custody" means an order of the court awarding custody of a child to one parent; and

(9) "visitation" means a period of time available to a noncustodial parent, under a sole custody arrangement, during which a child resides with or is under the care and control of the noncustodial parent."

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 601, AS AMENDED

CHAPTER 243

RELATING TO VETERINARY MEDICINE; AMENDING SECTIONS OF THE VETERINARY PRACTICE ACT.

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

Chapter 243 Section 1

Section 1. Section 61-14-5 NMSA 1978 (being Laws 1967, Chapter 62, Section 4, as amended) is amended to read:

"61-14-5. BOARD--DUTIES.--The board shall:

A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses;

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation;

E. employ personnel necessary to carry out its duties;

F. promulgate and enforce regulations necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all regulations promulgated by the board;

G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;

H. establish a five-member veterinary technician examining committee;

I. adopt regulations establishing continuing education requirements as a condition for license renewal; and

J. regulate the operation of veterinary facilities, including:

(1) establishing requirements for operation of a veterinary facility in accordance with recognized standards for the practice of veterinary medicine;

(2) issuing permits to qualified veterinary facilities; and

(3) adopting standards for inspection of veterinary facilities.

For purposes of this subsection, "veterinary facility" means any building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided."

Chapter 243 Section 2

Section 2. Section 61-14-13 NMSA 1978 (being Laws 1967, Chapter 62, Section 9, as amended) is amended to read:

"61-14-13. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, suspend for a definite period or revoke a license, certificate or permit held or applied for under the Veterinary Practice Act, or may reprimand, place on probation, enter a stipulation with or impose an administrative penalty in an amount not to exceed five thousand dollars ($5,000) on a holder of a license, certificate or permit, upon a finding by the board that the licensee, certificate or permit holder, or applicant:

(1) has committed an act of fraud, misrepresentation or deception in obtaining a license or permit;

(2) has been adjudicated insane or manifestly incapacitated;

(3) has used advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under rules promulgated by the board;

(4) has been convicted of a felony or other crime involving moral turpitude;

(5) is guilty of dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;

(6) has a professional association with or employs any person practicing veterinary medicine unlawfully;

(7) is guilty of fraud or dishonesty in the application or reporting of any test for disease in animals;

(8) has failed to maintain his professional premises and equipment in a clean and sanitary condition in compliance with facility permit rules promulgated by the board;

(9) is guilty of habitual or excessive use of intoxicants or drugs;

(10) is guilty of cruelty to animals;

(11) has had his license to practice veterinary medicine revoked by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;

(12) is guilty of unprofessional conduct by violation of a rule promulgated by the board pursuant to provisions of the Veterinary Practice Act;

(13) has failed to perform as a veterinary technician under the direct supervision of a licensed veterinarian;

(14) has failed as a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;

(15) is guilty of aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;

(16) has used any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;

(17) has willfully or negligently administered a drug or substance that will adulterate meat, milk, poultry, fish or eggs;

(18) has failed to maintain required logs and records;

(19) has used a prescription or has sold any prescription drug or prescribed extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;

(20) has failed to report, as required by law, or has made a false report of any contagious or infectious disease;

(21) has engaged in an unfair or deceptive practice; or

(22) has engaged in the practice of veterinary medicine on any animal or group of animals in the absence of a valid veterinarian-client-patient relationship.

B. Disciplinary proceedings may be instituted by sworn complaint by any person and shall conform with the provisions of the Uniform Licensing Act.

C. Any person whose license, certificate or permit is suspended or revoked by the board pursuant to provisions of this section may, at the discretion of the board, be relicensed or reinstated by the board at any time without examination upon written application to the board showing cause to justify relicensing or reinstatement."

Chapter 243 Section 3

Section 3. Section 61-14-14 NMSA 1978 (being Laws 1967, Chapter 62, Section 10, as amended) is amended to read:

"61-14-14. EXEMPTIONS.--Provisions of the Veterinary Practice Act do not apply to:

A. employees of federal, state or local governments performing official duties;

B. regular students in a veterinary school performing duties or actions assigned by an instructor or working under direct supervision of a licensed veterinarian during a school vacation period;

C. reciprocal aid of neighbors in performing routine accepted livestock management practices;

D. any veterinarian licensed in any foreign jurisdiction consulting with a licensed veterinarian;

E. any merchant or manufacturer selling at his regular place of business any medicine, feed, appliance or other product used in the prevention or treatment of animal disease;

F. the owner of an animal, his consignees and their employees while performing routine accepted livestock management practices in the care of animals belonging to the owner;

G. a member of the faculty of a veterinary school performing his regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians, veterinary technicians or persons holding or training for valid permits for artificial insemination or diagnosing pregnancy;

H. a person selling or applying any pesticide, insecticide or herbicide; or

I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals."

Chapter 243 Section 4

Section 4. Section 61-14-18 NMSA 1978 (being Laws 1967, Chapter 62, Section 13) is amended to read:

"61-14-18. PRACTICING WITHOUT LICENSE--PENALTY.--It is a misdemeanor for any person to practice veterinary medicine without complying with the provisions of the Veterinary Practice Act and without being the holder of a license entitling him to practice veterinary medicine in New Mexico."

Chapter 243 Section 5

Section 5. Section 61-14-19 NMSA 1978 (being Laws 1967, Chapter 62, Section 14) is amended to read:

"61-14-19. INJUNCTION.--The board or any person may bring an action in the district court to enjoin any person who is not a licensed veterinarian from engaging in the practice of veterinary medicine. If the court finds that the defendant is violating or

threatening to violate the Veterinary Practice Act, it shall enter an order restraining him from the violation. Any person so enjoined who violates the injunction may be punished for contempt of court. This remedy by injunction shall be in addition to any remedy provided for criminal prosecution of the offender."

Chapter 243 Section 6

Section 6. A new section of the Veterinary Practice Act is enacted to read:

"PROTECTED ACTIONS--COMMUNICATION.--

A. No current or former member of the board, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board shall bear liability or be subject to civil damages or criminal prosecutions for any action or omission undertaken or performed within the scope of the board's duties.

B. All written and oral communications made by any person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except to the extent necessary to carry out the board's purposes or in a judicial appeal from the board's actions.

C. The board shall make available to interested members of the public information about a disciplinary action taken by the board pursuant to Section 61-14-13 NMSA 1978, including the name of the licensee, the nature of the violation of the Veterinary Practice Act and the disciplinary action taken.

D. No person or legal entity providing information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

HOUSE BILL 628, AS AMENDED

CHAPTER 244

RELATING TO TRANSPORTATION; REMOVING AN EXEMPTION FROM THE MOTOR CARRIER ACT.

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

Chapter 244 Section 1

Section 1. Section 65-2-126 NMSA 1978 (being Laws 1981, Chapter 358, Section 47, as amended) is amended to read:

"65-2-126. EXEMPTIONS.--

A. Neither the Motor Carrier Act nor any provisions of that act shall apply or be construed to apply to any of the following:

(1) school buses as defined in Section

66-1-4.16 NMSA 1978, or the use of those vehicles under a permit pursuant to Sections 22-17-1 through 22-17-4 NMSA 1978, provided that the vehicles shall, notwithstanding the provisions of this section, be subject to all applicable school bus safety provisions as established by the state transportation director pursuant to Sections 22-16-2 and

22-16-11 NMSA 1978;

(2) United States mail carriers operating star routes, when not engaged in other business as common carriers or contract carriers of property or persons;

(3) hearses, funeral coaches or any other motor vehicle belonging to or operated by any funeral service practitioner or assistant funeral service practitioner licensed pursuant to the Thanatopractice Act in connection with his business;

(4) any municipal bus system; or

(5) private carriers.

B. Exempt from the provisions of Sections 65-2-96 through 65-2-99 NMSA 1978, except as otherwise provided in this section, shall be persons operating motor vehicles engaged in the transportation of materials mixed or unmixed for plant mix bituminous-treated base, base course, cement- or lime-treated subgrade, cold mix asphalt, treated base, plant mix bituminous pavement, hot recycled bituminous pavement, open-grade friction course, slurry seal, bituminous surface treatment, asphalt-rubber crack sealant and aggregates of sand, gravel, rock, crushed rock, rock ballast or dirt, treated or untreated, not transported in tank or tank-type vehicles, obtained or produced on the job and transported over irregular routes under unscheduled service. Persons operating motor vehicles engaged in the transportation of the materials provided for in this subsection shall be deemed to have statewide authority for the transportation of those materials. A minimum tariff for the transportation of the materials provided for in this subsection shall be set by the commission as provided by law. This exemption shall not apply to the transportation of asphalt petroleum and petroleum products and any commodities in bulk by tank vehicle.

C. Motor vehicles, regularly used to convey children to and from schools or school activities, that comply with the safety requirements prescribed by law may, upon application of the vehicle owner and an eleemosynary organization and in the discretion of the commission, be granted a permit for a single trip. Application for a single trip permit shall be in a form prescribed by the commission and shall state the time,

purpose, origin and destination of the trip for which the permit is requested and the name, purpose and status of any organization sponsoring the trip. Single-trip permits authorized by this subsection may be issued for a fee not to exceed five dollars ($5.00) to be determined by the commission, shall not be subject to tariff-filing requirements and shall be issued only upon the determination of the commission that no certified or permitted common or contract carrier service is available for the trip described in the application for permit."

HOUSE BILL 845

CHAPTER 245

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; PERTAINING TO LOCAL ECONOMICS; EXPANDING THE DEFINITION OF A QUALIFYING ENTITY; AMENDING THE LOCAL ECONOMIC DEVELOPMENT ACT.

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

Chapter 245 Section 1

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

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

A. "department" means the economic development department;

B. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying business by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying business; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying business; purchase of land for a publicly held industrial park; and the construction of a building for use by a qualifying business;

C. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a county;

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

E. "municipality" means any incorporated city, town or village;

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

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

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

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

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

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

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

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

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

HOUSE GOVERNMENT AND URBAN AFFAIRS

COMMITTEE SUBSTITUTE FOR HOUSE BILL 880

CHAPTER 246

RELATING TO INSURANCE; ENACTING THE VIATICAL SETTLEMENTS ACT; PROVIDING POWERS AND DUTIES; PROVIDING LICENSE FEES; ELIMINATING LIVING BENEFITS CONTRACTS; PRESCRIBING PENALTIES.

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

Chapter 246 Section 1

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

"SHORT TITLE.--This act may be cited as the "Viatical Settlements Act"."

Chapter 246 Section 2

Section 2. A new section of the New Mexico Insurance Code is enacted to read:

"DEFINITIONS.--As used in the Viatical Settlements Act:

A. "broker" means a person or his authorized representative who on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate viatical settlements between a viator and one or more providers. "Broker" does not include an attorney, accountant or financial planner retained by the viator to represent him;

B. "financing entity" means an underwriter, placement agent, lender, purchaser of securities, credit enhancer, purchaser of a policy or certificate from a provider or any other person who may be a party to a contract and who has a direct ownership in a policy or certificate that is the subject of a contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement and who has an agreement in writing with a provider to act as a participant in a financing transaction;

C. "financing transaction" means a transaction in which a provider or a financing entity obtains financing for contracts or viaticated policies or interests in such contracts or policies, including any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any direct purchase of interests in a policy or certificate;

D. "provider" means a person or his authorized representative who obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of one or more viatical settlement contracts or viaticated policies or interests in such contracts or policies, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more viatical settlement contracts or viaticated policies or interests in such contracts or policies. Provider does not include:

(1) a bank, savings bank, savings and loan association, credit union or other lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(2) the issuer of a life insurance policy providing accelerated benefits under and pursuant to the contract; or

(3) a natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

E. "viatical settlement contract" means a written agreement entered into between a provider and a viator;

F. "viaticated policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a viatical settlement contract; and

G. "viator" means the owner of a life insurance policy or a certificate holder under a group policy insuring the life of a person with a catastrophic, life-threatening or chronic illness or condition who enters or seeks to enter into a viatical settlement contract."

Chapter 246 Section 3

Section 3. A new section of the New Mexico Insurance Code is enacted to read:

"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 following fee:

(1) for initial license as a provider, one thousand dollars ($1,000);

(2) for initial license as a broker, one hundred dollars ($100);

(3) for renewal of a provider's license, two hundred dollars ($200); and

(4) for renewal of a broker's license, one hundred dollars ($100).

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 246 Section 4

Section 4. A new section of the New Mexico Insurance Code is enacted to read:

"LICENSE DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO RENEW.--

A. The superintendent may deny, suspend, revoke or refuse to renew the license of a provider or broker if the superintendent finds that:

(1) there was any material misrepresentation in the application for the license;

(2) the licensee, including any officer, partner, member, key management personnel or representative of the licensee, has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(3) the licensee has pleaded guilty or nolo contendere, or been found guilty of, any felony or a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(4) the licensee no longer meets the requirements for initial licensure;

(5) the licensee has performed any act prohibited by the Viatical Settlements Act;

(6) the provider demonstrates a pattern of unreasonable payments to viators;

(7) the provider has entered into a viatical settlement contract that has not been approved in accordance with the Viatical Settlements Act;

(8) the provider has failed to honor contractual obligations set out in a viatical settlement contract; or

(9) the provider has assigned, transferred or pledged a viaticated policy to a person other than another provider licensed in New Mexico or a financing entity.

B. Before the superintendent suspends, revokes or refuses to renew the license of a provider or broker, the superintendent shall conduct a hearing in accordance with Chapter 59A, Article 4 NMSA 1978.

C. Any person aggrieved by denial of an application may request a hearing before the superintendent in accordance with the provisions of Chapter 59A, Article 4 NMSA 1978."

Chapter 246 Section 5

Section 5. A new section of the New Mexico Insurance Code is enacted to read:

"APPROVAL OF VIATICAL SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS--CONTRACT TERMS.--

A. A person shall not use a viatical settlement contract or provide a disclosure statement form to a viator in New Mexico unless filed with and approved by the superintendent. The superintendent shall disapprove a viatical settlement contract or disclosure statement form if, in the superintendent's opinion, it is unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator.

B. The viatical settlement contract shall establish the terms under which the provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest to the provider of the death benefit or ownership of all or a portion of the insurance policy or certificate. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy."

Chapter 246 Section 6

Section 6. A new section of the New Mexico Insurance Code is enacted to read:

"REPORTING REQUIREMENTS AND CONFIDENTIALITY.--

A. Each licensee shall file with the superintendent on or before March 1 of each year an annual statement containing such information as the superintendent by rule may prescribe.

B. Except as otherwise allowed, a provider, broker, insurance company, insurance agent, insurance broker, information bureau, rating agency or company or any other person with actual knowledge of a viator's or insured's identity shall not disclose that identity to any other person unless the disclosure is:

(1) necessary to effect a viatical settlement between the viator and a provider and the viator has given written consent and, if the insured's identity is being disclosed and the insured is competent, the insured has given written consent to the disclosure;

(2) provided in response to an investigation by the superintendent or any other governmental officer or agency; or

(3) a term of or condition to the transfer of a viaticated policy by one provider to another provider."

Chapter 246 Section 7

Section 7. A new section of the New Mexico Insurance Code is enacted to read:

"EXAMINATION.--

A. The superintendent may examine the business and affairs of a licensee or applicant. The superintendent shall have the authority to order a licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting an examination shall be paid by the licensee or applicant.

B. Names and identification data for all viators or insureds shall be considered confidential information and shall not be disclosed by the superintendent unless required by law.

C. Records of all transactions of viatical settlement contracts shall be maintained by the provider and shall be available to the superintendent for inspection during reasonable business hours. A provider shall maintain records of each viatical settlement until five years after the death of the viator."

Chapter 246 Section 8

Section 8. A new section of the New Mexico Insurance Code is enacted to read:

"DISCLOSURE.--

A. A provider or broker shall provide a written disclosure statement form containing the following information to the viator no later than the time of application:

(1) possible alternatives to viatical settlement contracts for persons with catastrophic, life-threatening or chronic illnesses, including any accelerated death benefits offered under the viator's life insurance policy;

(2) that some or all of the proceeds of the viatical settlement may be free from federal income tax and from state franchise and income taxes, and that assistance should be sought from a professional tax adviser;

(3) that the viator has a right to rescind a viatical settlement contract within fifteen calendar days after receipt of the viatical settlement proceeds;

(4) that money will be sent to the viator within two business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract;

(5) that proceeds of the viatical settlement could be subject to the claims of creditors;

(6) that receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies; and

(7) that entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.

B. A provider shall disclose in writing the following information to the viator prior to the date the viatical settlement contract is signed by all parties:

(1) the affiliation, if any, between the provider and the issuer of an insurance policy to be viaticated;

(2) if an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the viator, the possible loss of coverage on the other lives and the advisability of consulting with the insurance producer or the company issuing the policy for advice on the proposed viatication; and

(3) the dollar amount of the current death benefit payable to the provider under the policy or certificate and the availability of any additional guaranteed insurance benefits and the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the provider's interest in those benefits."

Chapter 246 Section 9

Section 9. A new section of the New Mexico Insurance Code is enacted to read:

"GENERAL RULES.--

A. A provider entering into a viatical settlement contract shall first obtain:

(1) if the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;

(2) a witnessed document in which the viator:

(a) consents to the viatical settlement contract;

(b) acknowledges that the insured has a catastrophic, life-threatening or chronic illness or condition;

(c) represents that the viator has a full and complete understanding of the viatical settlement contract;

(d) asserts that he has a full and complete understanding of the benefits of the life insurance policy; and

(e) acknowledges that he has entered into the viatical settlement contract freely and voluntarily; and

(3) a document in which the insured consents to the release of his medical records to a provider or broker.

B. All medical information solicited or obtained by a licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.

C. All viatical settlement contracts entered into in New Mexico shall provide the viator with an unconditional right to rescind the contract for at least fifteen calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the provider of all viatical settlement proceeds.

D. Immediately upon the provider's receipt of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the viatical settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. The account shall be managed by a trustee or escrow agent independent of the parties to the contract. The trustee or escrow agent shall transfer the proceeds to the viator immediately upon the provider's receipt of acknowledgment of the transfer of the insurance policy.

E. Failure to pay the viator within the time specified in Paragraph (4) of Subsection A of Section 8 of the Viatical Settlements Act renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

F. Contacts with the viator or insured for the purpose of determining the health status of the insured by the provider or broker after the viatical settlement has occurred shall only be made by the provider or broker licensed in New Mexico and shall be limited to once every three months for insureds with a life expectancy of more than one year and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured under a viaticated policy for reasons other than determining the viator's health status."

Chapter 246 Section 10

Section 10. A new section of the New Mexico Insurance Code is enacted to read:

"RULES AND STANDARDS.--The superintendent may:

A. promulgate rules to implement the provisions of the Viatical Settlements Act;

B. establish standards for evaluating reasonableness of payments under viatical settlement contracts, including regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;

C. establish appropriate licensing requirements and standards for continued licensure for providers and brokers;

D. require a bond or other mechanism for financial accountability for viatical settlement providers; and

E. adopt rules governing the relationship and responsibilities of both insurers and providers and brokers during the viatication of a life insurance policy or certificate."

Chapter 246 Section 11

Section 11. A new section of the New Mexico Insurance Code is enacted to read:

"RELATIONSHIP TO OTHER LAWS.--The provisions of the Insurance Code other than the Viatical Settlements Act shall not apply to viatical settlements unless expressly provided. The following articles and provisions of the Insurance Code shall also apply to viatical settlements and providers and their promoters, sponsors, directors, officers, employees, agents, solicitors, brokers and other representatives. For the purposes of such applicability, a provider may be referred to as an insurer in:

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978; and

D. Chapter 59A, Article 16 NMSA 1978."

Chapter 246 Section 12

Section 12. REPEAL.--Sections 59A-20-34 through 59A-20-36 NMSA 1978 (being Laws 1989, Chapter 376, Sections 1 through 3) are repealed.

Chapter 246 Section 13

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 29

CHAPTER 247

RELATING TO THE SALE OF UNUSED MERCHANDISE; ENACTING THE UNUSED MERCHANDISE OWNERSHIP PROTECTION ACT; PROHIBITING THE SALE OF CERTAIN UNUSED MERCHANDISE UNDER CERTAIN CONDITIONS; REQUIRING RECORDS TO BE KEPT BY CERTAIN SELLERS OF UNUSED MERCHANDISE; PROVIDING PENALTIES.

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

Chapter 247 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Unused Merchandise Ownership Protection Act".

Chapter 247 Section 2

Section 2. DEFINITIONS.--As used in the Unused Merchandise Ownership Protection Act:

A. "open market" may include a "swap meet", an "indoor swap meet" or a "flea market" and means an event at which two or more persons offer personal property for sale or exchange and either:

(1) a fee is charged for those persons selling or exchanging personal property or a fee is charged to the public for admission to the event; or

(2) the event is held more than six times in a twelve-month period;

B. "unused merchandise" means tangible personal property that, since its original production or manufacturing, has never been used or consumed and, if placed in a package or container, is still in its original and unopened package or container; and

C. "vendor of unused merchandise" means a person who offers unused merchandise for sale or exchange at an open market, except a person who offers five or less items of the same unused merchandise for sale or exchange at an open market.

Chapter 247 Section 3

Section 3. PROHIBITED SALES--CERTAIN MERCHANDISE.--

A. It is a violation of the Unused Merchandise Ownership Protection Act for a vendor of unused merchandise to sell or offer for sale any baby food or infant formula, cosmetic, drug or medical device at an open market without displaying a written valid authorization from the manufacturer or distributor of the merchandise. The authorization shall identify the vendor of unused merchandise and shall specify the merchandise and expiration date of the merchandise that the vendor is authorized to sell.

B. As used in this section:

(1) "baby food or infant formula" means unused merchandise consisting of a food product manufactured, packaged and labeled specifically for consumption by a child less than two years of age;

(2) "cosmetic" means unused merchandise, other than soap, that is:

(a) 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; or

(b) intended for use as a component of any articles enumerated in Subparagraph (a) of this paragraph;

(3) "drug" means unused merchandise, other than food, that:

(a) is recognized in an official compendium;

(b) affects the structure or any function of the body of man or other animals; or

(c) is intended for use as a component of Subparagraph (a) or (b) of this paragraph, but does not include medical devices or their component parts or accessories;

(4) "medical device" means unused merchandise that is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, and that is:

(a) recognized in an official compendium;

(b) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(c) intended to affect the structure or function of the body of man or other animals and which does not achieve its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of its principal intended purposes; and

(5) "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.

Chapter 247 Section 4

Section 4. RECORDKEEPING REQUIREMENTS--VIOLATIONS.--

A. A vendor of unused merchandise shall maintain receipts for the vendor's purchase of any unused merchandise sold or offered for sale by the vendor at an open market. The receipts shall be kept at the open market in which the unused merchandise is offered for sale and at the vendor's residence or principal place of business for two years after the merchandise is sold. Each receipt shall specify:

(1) the date of the purchase;

(2) the name and address of the person from whom the unused merchandise was acquired;

(3) a description of the unused merchandise purchased, including any specific lot numbers or other identifying characteristics;

(4) the amount paid for the unused merchandise; and

(5) the signature of the buyer and the seller of the unused merchandise.

B. It is a violation of the Unused Merchandise Ownership Protection Act for a person to knowingly:

(1) falsify, obliterate or destroy any receipt required to be kept pursuant to this section;

(2) at the request of a police officer, as defined in Section 29-7-7 NMSA 1978, fail or refuse to produce any receipt required to be kept pursuant to this section; and

(3) fail to maintain any receipt as required by this section.

Chapter 247 Section 5

Section 5. EXEMPTIONS.--

A. The following persons are exempt from the provisions of the Unused Merchandise Ownership Protection Act:

(1) a vendor at an event organized or operated for religious, educational, charitable or other nonprofit purposes if no part of any admission fee or parking fee charged vendors or prospective purchasers and no part of the gross receipts or net earnings from the sale of merchandise at the event is paid to a private person for participating in the organization or operation of the event;

(2) a vendor at an industry or association trade show;

(3) a vendor at an event at which all of the merchandise offered for sale is new and at which all vendors are manufacturers or authorized representatives of manufacturers or distributors; and

(4) a vendor selling by sample, catalog or brochure for future delivery.

B. The requirements of the Unused Merchandise Ownership Protection Act do not apply to sales or offers for sale of the following unused merchandise:

(1) firewood, sand, gravel, flagstone, building stone or other natural product;

(2) live animals;

(3) vehicles subject to registration pursuant to Section 66-3-1 NMSA 1978;

(4) food intended for human consumption at the open market immediately after sale;

(5) merchandise offered for sale as an antique or otherwise historical item and, although never used, the style, packaging, material or appearance of which clearly indicates that the merchandise was not produced or manufactured within recent times;

(6) food offered for sale that was grown, harvested or processed by the vendor or the grower;

(7) art, crafts or handicrafts that were produced by the vendor or the grower; and

(8) fresh produce.

Chapter 247 Section 6

Section 6. PENALTIES.--A person who violates any provision of the Unused Merchandise Ownership Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

Chapter 247 Section 7

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 104, AS AMENDED

CHAPTER 248

MAKING AN APPROPRIATION TO THE WORKERS' COMPENSATION ADMINISTRATION FOR A STUDY OF THE PERMANENT PARTIAL DISABILITY AND RETURN TO WORK SYSTEMS UNDER THE WORKERS' COMPENSATION ACT AND THE NEW MEXICO OCCUPATIONAL DISEASE DISABLEMENT LAW; DECLARING AN EMERGENCY.

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

Chapter 248 Section 1

Section 1. APPROPRIATION.--Two hundred twenty-five thousand dollars ($225,000) is appropriated from the workers' compensation administration assessment fund to the workers' compensation administration for expenditure in fiscal years 2000 and 2001 for the purpose of contracting for a study of the permanent partial disability and return to work systems in New Mexico. The director of the workers' compensation administration may contract with an independent organization to conduct the study and seek comparisons with other workers' compensation jurisdictions and the labor department to

provide specific wage data for claimants included in the study. The director shall require the contractor to prepare and publish a report of the findings and recommendations of the study and shall distribute the report to the legislature, the governor, the workers' compensation advisory council and the workers' compensation administration. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the workers' compensation administration assessment fund.

Chapter 248 Section 2

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

SENATE BILL 560, AS AMENDED

SIGNED April 7, 1999

CHAPTER 249

RELATING TO EDUCATION; PROVIDING FOR AN ALTERNATIVE TEACHER-CERTIFICATION PROCESS; AMENDING A CERTAIN SECTION OF THE NMSA 1978; ENACTING A NEW SECTION OF THE SCHOOL PERSONNEL ACT.

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

Chapter 249 Section 1

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

"ALTERNATIVE CERTIFICATION.--

A. The state board shall issue an alternative certificate to a person meeting the statutory and regulatory requirements for alternative certification.

B. To receive an alternative certificate, an applicant must show that he has:

(1) completed a bachelor of arts or science degree at a regionally accredited institution of higher education, including completion of a minimum of thirty credit hours in a particular field at either the graduate or undergraduate level; or

(2) completed a master of arts or science degree at a regionally accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in a particular field; or

(3) completed a doctor of philosophy or doctor of education degree at an accredited institution of higher education; and

(4) have passed any teachers exam required by the state board for individuals seeking a standard certificate.

C. The degrees referred to in Paragraphs (1), (2) and (3) of Subsection B of this Section shall appertain and correspond to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the state board.

D. A person receiving an alternative certificate shall complete a minimum of twelve semester hours of instruction in teaching principles in a program approved by the state board or the state department of education in concert with the school district shall verify that the teacher candidate has successfully demonstrated the state-board-approved competencies for entry level teachers that correspond to the grade level being taught prior to assuming teaching duties.

E. The state board may, by rule, establish a procedure for awarding alternative certificates provided that any requirements implemented by the state board not exceed those established by statute."

Chapter 249 Section 2

Section 2. A new section of the School Personnel Act is enacted to read:

"ALTERNATIVE CERTIFICATES--EMPLOYMENT--DISCRIMINATION.-- A school district or state agency shall not discriminate against a person on the basis that he holds an alternative certificate."

Chapter 249 Section 3

Section 3. Section 22-10-3 NMSA 1978 (being Laws 1975, Chapter 306, Section 3, as amended) is amended to read:

"22-10-3. CERTIFICATE REQUIREMENT--TYPES OF CERTIFICATES--FORFEITURE OF CLAIM--EXCEPTION--ADMINISTRATOR APPRENTICESHIP.--

A. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency, any person administering in a public school and any person providing health care and administering medication or performing medical procedures in a public school shall hold a valid certificate authorizing the person to perform that function.

B. All certificates issued by the state board shall be standard certificates except that the state board may issue alternative, substandard and substitute certificates under certain circumstances. If a person applies for and is qualified to receive an alternative certificate, the state board shall issue an alternative certificate to a person not meeting the requirements for a standard certificate. If a local school board or the governing

authority of a state agency certifies to the state board that an emergency exists in the hiring of a qualified person, the state board may issue a substandard certificate to a person not meeting the requirements for a standard certificate. The state board may also issue a substitute certificate to a person not meeting the requirements for a standard certificate to enable the person to perform the functions of a substitute teacher pursuant to the regulations of the state board. All substandard and substitute certificates issued shall be effective for only one school year. An alternative certificate may be effective for up to three years, provided that after a person has satisfactorily completed a minimum of one year up to three years of teaching under the supervision of a mentor or clinical supervisor, the state board shall issue a standard certificate to that person. No person under the age of eighteen years shall hold a valid certificate, whether a standard, alternative, substandard or substitute.

C. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school without a valid certificate after the first three months of the school year shall thereafter forfeit all claim to compensation for services rendered.

D. This section shall not apply to a person performing the functions of a practice teacher as defined in the regulations of the state board.

E. Any school nurse certified by the department of education shall also be licensed by the board of nursing.

F. Notwithstanding any existing requirements, any person seeking certification as an administrator shall be required to serve a one-year apprenticeship. The state board shall develop criteria and regulations to implement the provisions of this subsection."

Chapter 249 Section 4

Section 4. DELAYED EFFECTIVE DATE.--The new material added by this act and amendments to Section 22-10-3 NMSA 1978 made by this act will not become effective until July 1, 2000.

SENATE BILL 581, AS AMENDED

CHAPTER 250

RELATING TO THE STATE CAPITOL; MAKING THE BUILDING SMOKE FREE.

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

Chapter 250 Section 1

Section 1. Section 24-16-4 NMSA 1978 (being Laws 1985, Chapter 85, Section 4) is amended to read:

"24-16-4. SMOKING PROHIBITED EXCEPT IN PERMITTED AREAS.--It is unlawful for any person to smoke in a public place or at a public meeting except in smoking-permitted areas. Except for private offices and the house and senate lounges, no part of the state capitol shall be designated as a smoking-permitted area."

SENATE BILL 635, AS AMENDED

CHAPTER 251

RELATING TO GAMING; PROVIDING FOR NONPROFIT DISCLOSURE; AMENDING SECTIONS OF THE GAMING CONTROL ACT.

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

Chapter 251 Section 1

Section 1. Section 60-2E-3 NMSA 1978 (being Laws 1997, Chapter 190, Section 5) is amended to read:

"60-2E-3. DEFINITIONS.--As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under common control with a company licensee; and

(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;

C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act;

D. "application" means a request for the issuance of a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act, but "application" does not include a supplemental form or information that may be required with the application;

E. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming;

F. "board" means the gaming control board;

G. "certification" means a notice of approval by the board of a person required to be certified by the board;

H. "certified technician" means a person certified by a manufacturer licensee to repair and service gaming devices, but who is prohibited from programming gaming devices;

I. "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company or other form of business organization that is not a natural person; "company" does not mean a nonprofit organization;

J. "distributor" means a person who supplies gaming devices to a gaming operator but does not manufacture gaming devices;

K. "equity security" means an interest in a company that is evidenced by:

(1) voting stock or similar security;

(2) a security convertible into voting stock or similar security, with or without consideration, or a security carrying a warrant or right to subscribe to or purchase voting stock or similar security;

(3) a warrant or right to subscribe to or purchase voting stock or similar security; or

(4) a security having a direct or indirect participation in the profits of the issuer;

L. "executive director" means the chief administrative officer appointed by the board pursuant to Section 60-2E-7 NMSA 1978;

M. "finding of suitability" means a certification of approval issued by the board permitting a person to be involved directly or indirectly with a licensee, relating only to the specified involvement for which it is made;

N. "game" means an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played in a private residence in which no person makes money for operating the activity except through winnings as a player;

O. "gaming" means offering a game for play;

P. "gaming activity" means any endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

Q. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game; "gaming device" does not include a system or device that affects a game solely by stopping its operation so that the outcome remains undetermined;

R. "gaming employee" means a person connected directly with a gaming activity; "gaming employee" does not include:

(1) bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

(2) secretarial or janitorial personnel;

(3) stage, sound and light technicians; or

(4) other nongaming personnel;

S. "gaming establishment" means the premises on or in which gaming is conducted;

T. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;

U. "gaming operator" means a person who conducts gaming;

V. "holding company" means a company that directly or indirectly owns or has the power or right to control a company that is an applicant or licensee, but a company that does not have a beneficial ownership of more than ten percent of the equity securities of a publicly traded corporation is not a holding company;

W. "immediate family" means natural persons who are related to a specified natural person by affinity or consanguinity in the first through the third degree;

X. "independent administrator" means a person who administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;

Y. "institutional investor" means a state or federal government pension plan or a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:

(1) a bank as defined in Section 3(a)(6) of the federal Securities Exchange Act of 1934;

(2) an insurance company as defined in Section 2(a)(17) of the federal Investment Company Act of 1940;

(3) an investment company registered under Section 8 of the federal Investment Company Act of 1940;

(4) an investment adviser registered under Section 203 of the federal Investment Advisers Act of 1940;

(5) collective trust funds as defined in Section 3(c)(11) of the federal Investment Company Act of 1940;

(6) an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or

(7) a group comprised entirely of persons specified in Paragraphs (1) through (6) of this subsection;

Z. "intermediary company" means a company that:

(1) is a holding company with respect to a company that is an applicant or licensee; and

(2) is a subsidiary with respect to any holding company;

AA. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose compensation exceeds an amount established by the board in a rule;

BB. "license" means an authorization required by the board for engaging in gaming activities;

CC. "licensee" means a person to whom a valid license has been issued;

DD. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to any gaming device for use or play in New Mexico or for sale, lease or distribution outside New Mexico from any location within New Mexico;

EE. "net take" means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators:

(1) cash received from patrons for playing a game;

(2) cash received in payment for credit extended by a licensee to a patron for playing a game; and

(3) compensation received for conducting a game in which the licensee is not a party to a wager;

FF. "nonprofit organization" means:

(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or

(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation for the post or auxiliary unit, in existence in New Mexico prior to January 1, 1997, of a veterans' organization that is described in Section 501(c)(19) or (23) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code;

GG. "person" means a legal entity;

HH. "premises" means land, together with all buildings, improvements and personal property located on the land;

II. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;

JJ. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

KK. "publicly traded corporation" means a corporation that:

(1) has one or more classes of securities registered pursuant to the securities laws of the United States or New Mexico;

(2) is an issuer subject to the securities laws of the United States or New Mexico; or

(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that the board finds provide protection for institutional investors that is comparable to or greater than the stricter of the securities laws of the United States or New Mexico;

LL. "registration" means a board action that authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;

MM. "subsidiary" means a company, all or a part of whose outstanding equity securities are owned, subject to a power or right of control or held, with power to vote, by a holding company or intermediary company; and

NN. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee."

Chapter 251 Section 2

Section 2. Section 60-2E-19 NMSA 1978 (being Laws 1997, Chapter 190, Section 21) is amended to read:

"60-2E-19. REGISTRATION WITH BOARD BY COMPANY APPLICANTS--NONPROFIT ORGANIZATIONS--REQUIRED INFORMATION.--

A. A company applicant shall provide the following information to the board on forms provided by the board:

(1) the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;

(2) the rights and privileges acquired by the holders of different classes of authorized securities;

(3) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(4) remuneration to persons, other than directors, officers and key executives, exceeding fifty thousand dollars ($50,000) per year;

(5) bonus and profit-sharing arrangements within the company;

(6) management and service contracts pertaining to the proposed gaming activity in this state;

(7) balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be certified by independent certified public accountants; and

(8) any further financial data that the board deems necessary or appropriate.

B. A nonprofit organization applying for a license as a nonprofit gaming operator pursuant to the Gaming Control Act shall provide in its application:

(1) the organization, financial structure and nature of the nonprofit organization, including the names of all officers, directors and key executives;

(2) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(3) management and service contracts pertaining to the proposed gaming activity in this state;

(4) balance and profit and loss statements for at least the three preceding fiscal years or, if the nonprofit organization has not been in business for a period of three years, balance sheets and profit and loss statements from the date of charter or incorporation and projected for three years from the date of charter or incorporation. All balance sheets and profit and loss statements shall be certified by independent certified public accountants;

(5) any further financial data that the board deems necessary or appropriate;

(6) if the nonprofit organization has various classes of members, information detailing the rights and privileges attributed to each class of member and providing the number of members in each class;

(7) the level of remuneration for all paid employees of the nonprofit organization; and

(8) details about any other form of remuneration or awards that are conferred on members."

Chapter 251 Section 3

Section 3. Section 60-2E-20 NMSA 1978 (being Laws 1997, Chapter 190, Section 22) is amended to read:

"60-2E-20. INDIVIDUAL CERTIFICATION OF OFFICERS, DIRECTORS AND OTHER PERSONS.--

A. An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall be certified individually, according to the provisions of the Gaming

Control Act, and if in the judgment of the board the public interest is served by requiring any or all of the company's key executives to be certified, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests.

B. The president or commander and key executives of a nonprofit organization that holds or has applied for a license shall be certified individually. For purposes of this subsection, key executives are those officers, employees, volunteers and other persons who are designated by the nonprofit organization as key executives. The board may require additional officers, employees, volunteers and other persons to become certified if the board determines the public interest is served by the additional certifications. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. An officer, employee, volunteer or other person required or requested to be certified shall provide to the board an application for certification, including personal history, financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and any other information that the board deems necessary or appropriate."

Chapter 251 Section 4

Section 4. Section 60-2E-23 NMSA 1978 (being Laws 1997, Chapter 190, Section 25) is amended to read:

"60-2E-23. FINDING OF SUITABILITY REQUIRED FOR DIRECTORS, OFFICERS AND KEY EXECUTIVES--REMOVAL FROM POSITION IF FOUND UNSUITABLE--SUSPENSION OF SUITABILITY BY BOARD.--

A. Each officer, director and key executive of a holding company, intermediary company or publicly traded corporation that the board determines is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of the subsidiary licensee or applicant shall apply for a finding of suitability.

B. If any officer, director or key executive of a holding company, intermediary company or publicly traded corporation required to be found suitable pursuant to Subsection A of this section fails to apply for a finding of suitability within thirty days after being requested to do so by the board, or is not found suitable by the board, or if his finding of suitability is revoked after appropriate findings by the board, the holding company, intermediary company or publicly traded corporation shall immediately remove that officer, director or key executive from any office or position in which the person is

engaged in the administration or supervision of, or any other involvement with, the activities of the certified subsidiary until the person is thereafter found to be suitable. If the board suspends the finding of suitability of any officer, director or key executive, the holding company, intermediary company or publicly traded corporation shall immediately and for the duration of the suspension suspend that officer, director or key executive from performance of any duties in which he is actively and directly engaged in the administration or supervision of, or any other involvement with, the activities of the subsidiary licensee."

SENATE BILL 700, AS AMENDED

CHAPTER 252

RELATING TO TRIBAL-STATE AGREEMENTS; ESTABLISHING A PROCESS FOR NEGOTIATION, APPROVAL, EXECUTION AND AMENDMENT OF CERTAIN AGREEMENTS BETWEEN THE STATE AND INDIAN TRIBES; DECLARING AN EMERGENCY.

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

Chapter 252 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Compact Negotiation Act".

Chapter 252 Section 2

Section 2. DEFINITIONS.--As used in the Compact Negotiation Act:

A. "committee" means the joint legislative committee on compacts;

B. "compact" means a tribal-state class III gaming compact entered into between a tribe and the state pursuant to the federal Indian Gaming Regulatory Act and including any separate agreement ancillary to that compact;

C. "governor" means the governor of New Mexico; and

D. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within the state.

Chapter 252 Section 3

Section 3. COMPACTS--NEGOTIATION--SUBMISSION TO COMMITTEE BY GOVERNOR.--

A. A tribe, pursuant to action of its governing authority, may request the state to negotiate a compact or to negotiate an amendment to an approved and existing compact. The request shall be in writing and shall be submitted to the governor.

B. The legislature by joint resolution or the governor may request a tribe to negotiate a compact or to negotiate an amendment to an approved and existing compact by submitting a written request to the chief executive officer of the tribe or a representative authorized by an existing compact to negotiate modifications to that compact.

C. The governor may designate a representative to negotiate the terms of a compact or an amendment, unless a representative has been identified in the wording of the compact to be amended. The designation shall be written, and a copy of the designation shall be delivered or mailed within three days of the designation to the attorney general, the speaker of the house of representatives and the president pro tempore of the senate. The governor or the governor's designated representative is authorized to negotiate the terms of a compact or amendment on behalf of the state, but neither the representative nor the governor is authorized to execute a compact or amendment on behalf of the state without legislative approval granted pursuant to the provisions of Section 4 of the Compact Negotiation Act.

D. If a proposed compact or amendment is agreed upon through negotiations between the tribal representative and the governor's representative, it shall be prepared and submitted by the governor to the committee within five days of the conclusion of negotiations. The governor shall include in his submittal document his recommendation for approval of the proposed compact or amendment and comments about or analysis of its provisions.

Chapter 252 Section 4

Section 4. SUBMITTAL TO COMMITTEE--COMMITTEE ACTION--

LEGISLATIVE ACTION.--

A. Submittal of a proposed compact or amendment occurs when the compact or amendment and the submittal document are received for the committee by the legislative council service.

B. After its receipt, the committee shall review the proposed compact or amendment in a timely manner but no later than forty-five days from receipt and shall:

(1) recommend approval of the proposed compact or amendment by submitting a joint resolution to approve the compact or amendment to the legislature; or

(2) by written transmittal document, propose specific modifications to the proposed compact or amendment and request the governor to resume negotiations with the tribe.

C. If the committee proposes specific modifications to the proposed compact or amendment, the governor or his designated representative shall resume negotiations with the tribe within twenty days of receipt of the transmittal document unless within that time period either the governor or the tribe refuses to negotiate further, in which case the governor shall notify the committee immediately.

D. If negotiations are resumed pursuant to Subsection C of this section and a modified proposed compact or amendment is agreed to, the governor shall submit the modified proposed compact or amendment together with any additional analysis or recommendations to the committee. The approval process described in this section for the originally submitted proposed compact or amendment shall be followed for consideration of a proposed modified compact or a proposed modified amendment, except that the committee shall conduct its review in a timely manner but in not more than thirty days.

E. Within thirty days of being notified that further negotiations are refused, the committee shall meet to reconsider the proposed compact or amendment together with any changes agreed upon by the negotiating parties. The committee shall submit to the legislature the proposed compact or amendment and a joint resolution to approve the proposed compact or amendment with the committee's recommendation to approve it or disapprove it, or expressing no recommendation on the action that should be taken by the legislature.

F. The committee may return a proposed compact or amendment with suggested modifications to the governor and the tribe for renegotiation no more than three times. After the third submittal for renegotiation, the committee shall submit to the legislature the proposed compact or amendment and a joint resolution to approve the proposed compact or amendment with the committee's recommendation to approve it or disapprove it, or expressing no recommendation on the action that should be taken by the legislature.

G. If the legislature is in session when the committee makes its decision on the proposed compact or amendment, the committee shall prepare and introduce a joint resolution to approve the proposed compact or amendment without delay after reaching its decision. The joint resolution shall be accompanied by the committee's recommendation to approve or to disapprove or expressing no recommendation. A joint resolution may cover more than one compact or amendment if the terms of the compacts or amendments are identical except for the name of the tribe and the name of the person executing the compact on behalf of the tribe. If a majority in each house votes to adopt the joint resolution, the proposed compact or amendment is approved by the legislature, and the governor shall execute it on behalf of the state.

H. If the legislature is not in session when the recommendation of the committee is submitted, the committee shall proceed pursuant to the provisions of Subsection G of this section by no later than the second day of the next regular or special session of the legislature.

I. The legislature may only amend or modify the joint resolution submitted to it pursuant to the provisions of this section so as to correct technical errors in the text or format. Neither house may refer the joint resolution to a committee other than a committee of the whole in each house.

J. If a request for negotiation of a compact or amendment is made and the proposed compact or amendment is identical to a compact or amendment previously approved by the legislature except for the name of the compacting tribe and the names of the persons to execute the compact or amendment on behalf of the tribe and on behalf of the state, the governor shall approve and sign the compact or amendment on behalf of the state without submitting the compact for approval pursuant to the provisions of this section. A compact or amendment signed by the governor pursuant to this subsection is deemed approved by the legislature.

Chapter 252 Section 5

Section 5. JOINT LEGISLATIVE COMMITTEE ON COMPACTS--CREATION--MEMBERSHIP--AUTHORITY.--

A. The joint legislative "committee on compacts" is created. Once established it shall continue to exist until specific action is taken by the legislature to terminate its existence.

B. The committee shall consider the requirements of the federal Indian Gaming Regulatory Act, provisions of existing state law and the best interests of the tribes and the citizens of the state in considering any compact or amendment submitted to it.

C. The committee shall have sixteen members, eight from the house of representatives and eight from the senate. House members shall be appointed annually by the speaker of the house and senate members shall be appointed annually by the committees' committee or, if the senate appointments are made in the interim, by the president pro tempore after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house to give the two major political parties in each house equal representation on the committee. The appointing authorities shall consider appointing to the committee a Native American member or a member who represents a district in which Native Americans constitute a significant percentage of the voting age population.

D. The president pro tempore of the senate shall designate a senate member of the committee to be chairman of the committee in odd-numbered years and the vice chairman in even-numbered years. The speaker of the house of representatives shall designate a house member of the committee to be chairman of the committee in even-numbered years and the vice chairman in odd-numbered years.

E. The committee shall meet at the call of the chairman to consider a compact or amendment submitted to it.

F. The committee may meet during legislative sessions as needed.

G. Staff services for the committee shall be provided by the legislative council service.

Chapter 252 Section 6

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

SENATE BILL 737, AS AMENDED

SIGNED April 7, 1999

CHAPTER 253

RELATING TO FEDERAL MINERAL LEASING REVENUES; PROVIDING THAT CERTAIN EXCESS REVENUES BE DISTRIBUTED TO THE COMMON SCHOOL PERMANENT FUND; MAKING AN APPROPRIATION.

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

Chapter 253 Section 1

Section 1. Section 22-8-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 90, as amended) is amended to read:

"22-8-34. FEDERAL MINERAL LEASING FUNDS.--

A. Except for an annual appropriation to the instructional material fund and to the bureau of mines and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other money received by the state pursuant to the provisions of the federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed to the public school fund.

B. All money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b) shall be distributed as follows:

(1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and

(2) the remainder shall be distributed to the common school permanent fund."

SENATE BILL 350

CHAPTER 254

RELATING TO CHILDREN; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO ELIMINATE THE ROLE OF RESOURCE CONSULTANTS IN THE CHILDREN'S MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES ACT; REPEALING A SECTION OF THE NMSA 1978.

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

Chapter 254 Section 1

Section 1. Section 32A-6-2 NMSA 1978 (being Laws 1995, Chapter 207, Section 2) is amended to read:

"32A-6-2. DEFINITIONS.--As used in the Children's Mental Health and Developmental Disabilities Act:

A. "aversive stimuli" means anything that, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the child, is administered or done to the child for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "clinician" means a physician, licensed psychologist, licensed independent social worker or licensed professional clinical counselor;

C. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the child, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child;

(2) involve no restrictions on physical movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child or others from physical injury; and

(3) are conducted at the suitable available facility closest to the child's place of residence;

D. "convulsive treatment" means any form of mental health treatment that depends upon creation of a convulsion by any means, including electroconvulsive treatment and insulin coma treatment;

E. "developmental disability" means a severe chronic disability that:

(1) is attributable to a mental or physical impairment or a combination of mental or physical impairments;

(2) is manifested before a person reaches twenty-two years of age;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activities:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; or

(g) economic self-sufficiency; and

(5) reflects a person's need for a combination and sequence of special, interdisciplinary or generic treatments or other supports and services that are of lifelong or extended duration and that are individually planned or coordinated;

F. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a licensed psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

G. "experimental treatment" means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in the competent practice of medicine and psychology and supported by scientifically acceptable studies;

H. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

I. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled child in acquiring and maintaining those skills and

behaviors that enable the child to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. "Habilitation" includes programs of formal, structured education and treatment;

J. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the child will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including grave passive neglect;

K. "likelihood of serious harm to others" means that it is more likely than not that in the near future the child will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the child;

L. "mental disorder" means a substantial disorder of the child's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

M. "mental health or developmental disabilities professional" means a physician or other professional who, by training or experience, is qualified to work with individuals with mental disorders or developmental disabilities;

N. "physician" or "licensed psychologist", when used for the purpose of hospital admittance or discharge, means a physician or licensed psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

O. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery and all other forms of brain surgery if the surgery is performed for the following purposes:

(1) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior.

"Psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

P. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution, supervisory residence or nursing home when the individual resides on the premises and where one or more of the following measures is available for use:

(1) a mechanical device to restrain or restrict the child's movement;

(2) a secure seclusion area from which the child is unable to exit voluntarily;

(3) a facility or program designed for the purpose of restricting the child's ability to exit voluntarily; or

(4) the involuntary emergency administration of psychotropic medication; and

Q. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the child."

Chapter 254 Section 2

Section 2. Section 32A-6-11.1 NMSA 1978 (being Laws 1995, Chapter 207, Section 13) is amended to read:

"32A-6-11.1. CONSENT TO PLACEMENT IN A RESIDENTIAL TREATMENT OR HABILITATION PROGRAM--CHILDREN YOUNGER THAN FOURTEEN YEARS OF AGE.--

A. A child younger than fourteen years of age shall not receive residential treatment for mental disorders or habilitation for developmental disabilities, except as provided in this section or Section 32A-6-13 NMSA 1978.

B. A child younger than fourteen years of age may be admitted to a residential treatment or habilitation program with the informed consent of the child's parent, guardian or legal custodian for a period not to exceed sixty days, subject to the requirements of this section.

C. In order to admit a child younger than fourteen years of age to a residential treatment or habilitation program, the child's parent, guardian or legal custodian shall knowingly and voluntarily execute a consent to admission document prior to the child's admission. The consent to admission document shall be in a form designated by the supreme court. The consent to admission document shall include a clear statement of the parent's, guardian's or legal custodian's right to voluntarily consent to or refuse the child's admission; the parent's, guardian's or legal custodian's right to request the child's immediate discharge from the residential treatment program at any time; and the parent's, guardian's or legal custodian's rights when the parent, guardian or legal custodian requests the child's discharge and the child's physician, licensed psychologist

or the director of the residential treatment facility determines that the child needs continued treatment. The facility shall ensure that each statement is clearly explained in the child's and parent's, guardian's or legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and parent's, guardian's or legal custodian's developmental abilities. Each statement shall be initialed by the child's parent, guardian or legal custodian.

D. The parent's, guardian's or legal custodian's executed consent to admission document shall be filed with the child's hospital records within twenty-four hours of the time of admission.

E. Upon the filing of the parent's, guardian's or legal custodian's consent to admission document in the child's hospital records, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner regarding the admission and provide the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice regarding a child's admission to a residential treatment or habilitation program, establish a sequestered court file.

F. The director of a residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, petition the court to appoint a guardian ad litem for the child. When the court receives the petition, the court shall appoint a guardian ad litem. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

G. Within seven days of a child's admission to a residential treatment or habilitation program, a guardian ad litem, representing the child's best interests and in accordance with the provisions of the Children's Mental Health and Developmental Disabilities Act, shall meet with the child, the child's parent, guardian or legal custodian and the child's clinician. The guardian ad litem shall determine the following:

(1) whether the child's parent, guardian or legal custodian understands and consents to the child's admission to a residential treatment or habilitation program;

(2) whether the admission is in the child's best interests; and

(3) whether the admission is appropriate for the child and is consistent with the least drastic means principle.

H. If a guardian ad litem determines that the child's parent, guardian or legal custodian understands and consents to the child's admission and that the admission is in the child's best interests, is appropriate for the child and is consistent with the least drastic means principle, the guardian ad litem shall so certify on a form designated by the supreme court. The form, when completed by the guardian ad litem, shall be filed in the child's patient record kept by the residential treatment or habilitation program, and a

copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The guardian ad litem's statement shall not identify the child by name.

I. Upon reaching the age of majority, a child who was admitted to a residential treatment or habilitation program pursuant to this section may petition the district court for the records of the district court regarding all matters pertinent to the child's admission to a residential treatment or habilitation program. The district court, upon receipt of the petition and upon a determination that the petitioner is in fact a child who was admitted to a residential treatment or habilitation program, shall provide all court records regarding the admission to the petitioner, including all copies in the court's possession.

J. Any parent, guardian or legal custodian who consents to admission of his child to a residential treatment or habilitation program has the right to request the child's immediate discharge from the residential treatment or habilitation program, subject to the provisions of this section. If a child's parent, guardian or legal custodian informs the director, a physician or any other member of the residential treatment or habilitation program staff that the parent, guardian or legal custodian desires the child to be discharged from the program, the director, physician or other staff shall provide for the child's immediate discharge and remit the child to the parent's, guardian's or legal custodian's care. The residential treatment or habilitation program shall also notify the child's guardian ad litem. A child whose parent, guardian or legal custodian requests his immediate discharge shall be discharged, except when the director of the residential treatment program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment. In that event, the director, physician or licensed psychologist shall, on the first business day following the child's parent's, guardian's or legal custodian's request for release of the child from the program, request that the children's court attorney initiate involuntary residential treatment proceedings. The children's court attorney may petition the court for such proceedings. The child has a right to a hearing regarding his continued treatment within seven days of the request for release.

K. A child who is admitted to a residential treatment or habilitation program pursuant to this section shall have his admission reviewed at the end of the sixty-day period following the date of the child's initial admission to the program. The child's physician or licensed psychologist shall review the child's residential treatment or habilitation program and determine whether it is in the best interests of the child to continue the admission. If the child's physician or licensed psychologist concludes that continuation of the residential treatment or habilitation program is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient records. The residential treatment or habilitation program shall notify the guardian ad litem for the child at least seven days prior to the date that the sixty-day period is to end or, if necessary, request a guardian ad litem pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The guardian ad litem shall then personally meet with the child, the child's parent, guardian or legal custodian and the child's clinician and ensure that the child's parent, guardian or legal custodian understands and consents to the child's continued admission to the residential

treatment or habilitation program. If the guardian ad litem determines that the child's parent, guardian or legal custodian understands and consents to the child's continued admission to the residential treatment or habilitation program, that the continued admission is in the child's best interest, that the placement continues to be appropriate for the child and consistent with the least drastic means principle and that the clinician has recommended the child's continued stay in the program, the guardian ad litem shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days following the child's last admission or a guardian ad litem's certification, whichever occurs first.

L. When a guardian ad litem determines that the child's parent, guardian or legal custodian does not understand or consent to the child's admission to a residential treatment or habilitation program, that the admission is not in the child's best interests, that the placement is inappropriate for the child or is inconsistent with the least drastic means principle or that the child's clinician has not recommended a continued stay by the child in the residential treatment or habilitation program, the child shall be released or involuntary placement procedures shall be initiated.

M. If the child's parent, guardian or legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's family refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act."

Chapter 254 Section 3

Section 3. Section 32A-6-12 NMSA 1978 (being Laws 1995, Chapter 207, Section 14) is amended to read:

"32A-6-12. VOLUNTARY RESIDENTIAL TREATMENT OR HABILITATION.--

A. A child fourteen years of age or older shall not receive treatment for mental disorders or habilitation for developmental disabilities on a voluntary residential basis, except as provided in this section.

B. Any child fourteen years of age or older may voluntarily admit himself to a residential treatment or habilitation program, with the informed consent of his parent, guardian or legal custodian, for a period not to exceed sixty days, subject to the requirements of this section.

C. To have a child voluntarily admitted to a residential treatment or habilitation program, the child and the child's parent, guardian or legal custodian shall knowingly and voluntarily execute, prior to admission, a child's voluntary consent to admission document. The document shall include a clear statement of the child's right to voluntarily consent or refuse to consent to his admission; the child's right to request an immediate discharge from the residential treatment program at any time; and the child's rights when he requests a discharge and his physician, licensed psychologist or the director of the residential treatment facility determines the child needs continued treatment. The facility shall ensure that each statement is clearly explained in the child's and parent's, guardian's or legal custodian's primary language, if that is their language of preference, and in a manner appropriate to the child's and parent's, guardian's or legal custodian's developmental abilities, and each statement shall be initialed by the child and his parent, guardian or legal custodian.

D. The child's parent, guardian or legal custodian shall obtain an independent attorney for the child and shall notify the residential treatment facility of that attorney's name within seventy-two hours of the child's voluntary admission. Prior to admission, the residential treatment facility shall inform the child's parent, guardian or legal custodian of the duty to obtain an independent attorney for the child within seventy-two hours. If the child's parent, guardian or legal custodian is indigent, the parent, guardian or legal custodian may petition the court to appoint an attorney for the child.

E. The child's executed voluntary consent to admission document shall be filed in the patient's hospital record within twenty-four hours of the time of admission.

F. Upon the filing of the child's voluntary consent to admission document in the patient's hospital record, the director of the residential treatment or habilitation program or the director's designee shall, on the next business day following the child's admission, notify the district court or the special commissioner of the admission, giving the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice of a child's voluntary admission to a residential treatment program, establish a sequestered court file.

G. If within seventy-two hours of the child's voluntary admission the child has not met with an independent attorney and the child's parent, guardian or legal custodian has not notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall, during the next business day, petition the court to appoint an attorney. When the court receives the petition, the court shall appoint an attorney. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

H. If within seventy-two hours of the child's voluntary admission the child has met with an independent attorney or the child's parent, guardian or legal custodian has notified the residential treatment or habilitation program of the name of the child's independent attorney, the residential treatment or habilitation program shall, during the next business

day, notify the court or the special commissioner of the name of the child's independent attorney.

I. Within seven days of the admission, an attorney representing the child pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act shall meet with the child. At the meeting with the child, the attorney shall explain to the child the following:

(1) the child's right to an attorney;

(2) the child's right to terminate his voluntary admission and the procedures to effect termination;

(3) the effect of terminating the child's voluntary admission and options of the physician and other interested parties to the petition for an involuntary admission; and

(4) the child's rights under the provisions of the Children's Mental Health and Developmental Disabilities Act, including the right to:

(a) legal representation;

(b) a presumption of competence;

(c) receive daily visitors of the child's choice;

(d) receive and send uncensored mail;

(e) have access to telephones;

(f) follow or abstain from the practice of religion;

(g) a humane and safe environment;

(h) physical exercise and outdoor exercise;

(i) a nourishing, well-balanced, varied and appetizing diet;

(j) medical treatment;

(k) educational services;

(l) freedom from unnecessary or excessive medication;

(m) individualized treatment and habilitation; and

(n) participation in the development of the individualized treatment plan and access to that plan on request.

J. If the attorney determines that the child understands his rights and that the child voluntarily and knowingly desires to remain as a patient in a residential treatment or habilitation program, the attorney shall so certify on a form designated by the supreme court. The form, when completed by the attorney, shall be filed in the child's patient record at the residential treatment or habilitation program facility, and a copy shall be forwarded to the court or special commissioner within seven days of the child's admission. The attorney's statement shall not identify the child by name.

K. Upon reaching the age of majority, a child who was a voluntary admittee to a residential treatment or habilitation program may petition the district court for the records of the court regarding all matters pertinent to his voluntary admission to a residential treatment or habilitation program. The court, upon receipt of the petition and upon a determination that the petitioner was in fact the child who was a voluntary admittee to a residential treatment or habilitation program, shall give all court records regarding the admission to the petitioner, including all copies in the court's possession.

L. Any child voluntarily admitted to a residential treatment or habilitation program has the right to an immediate discharge from the residential treatment or habilitation program upon his request, except as provided in this section. If a child informs the director, physician or any other member of the residential treatment or habilitation program staff that he desires to be discharged from the voluntary program, the director, physician or other staff member shall provide for the child's immediate discharge. The residential treatment or habilitation program shall not require that the child's request be in writing. Upon the request, the residential treatment or habilitation program shall notify the child's parent, guardian or legal custodian to take custody of the child and remit the child to the parent's, guardian's or legal custodian's care. The residential treatment or habilitation program shall also notify the child's attorney. If the child's parent, guardian or legal custodian is unavailable to take custody of the child and immediate discharge of the child would endanger the child, the residential treatment or habilitation program may detain the child until a safe and orderly discharge is possible. If the child's family refuses to take physical custody of the child, the residential treatment or habilitation program shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into protective custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act. A child requesting immediate discharge shall be discharged, except in those situations when the director of the residential treatment or habilitation program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment as otherwise provided under the Children's Mental Health and Developmental Disabilities Act. In that event, the director, physician or licensed psychologist, after making the determination, shall, on the first business day following the child's request for release from the voluntary program, request that the children's court attorney initiate involuntary placement proceedings. The children's court attorney may petition for such a placement.

The child has a right to a hearing on his continued treatment within seven days of his request for release.

M. A child who is a voluntary admittee to a residential treatment or habilitation program shall have his voluntary admission reviewed at the end of a sixty-day period from the date of his initial admission to the program. The review shall be accomplished by having the child's physician or licensed psychologist review the child's treatment and determine whether it would be in the best interests of the child to continue the voluntary admission. If the child's physician or licensed psychologist concludes that continuation of treatment is in the child's best interests, the child's clinician shall so state in a form to be filed in the child's patient record. The residential treatment or habilitation program shall notify the attorney for the child at least seven days prior to the date that the sixty-day period is to end or, if necessary, request an attorney pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The attorney shall then personally meet with the child and ensure that the child understands his rights as set forth in this section, that the child understands the method for voluntary termination of his admission and that the child knowingly and voluntarily consents to his continued treatment. If the attorney determines that the child understands these rights and that the child voluntarily and knowingly desires to remain as a patient in the residential treatment or habilitation program and that the clinician has recommended the continued stay in the program, the attorney shall so certify on a form designated by the supreme court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days from the last admission or attorney's certification, whichever comes first.

N. If the attorney determines that the child does not voluntarily desire to remain in the program or if the clinician of the child has not recommended continued stay by the child in the residential treatment or habilitation program, the child shall be released or the involuntary placement procedures set forth in this section and the Children's Mental Health and Developmental Disabilities Act shall be followed."

Chapter 254 Section 4

Section 4. Section 32A-18-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 224, as amended) is amended to read:

"32A-18-1. CULTURAL RECOGNITION.--

A. A person who serves as a judge, prosecutor, guardian ad litem, treatment guardian, court appointed attorney, court appointed special advocate, foster parent, mental health commissioner or mental health treatment service provider for a child subject to an abuse or neglect petition, a family in need of services petition or a mental health placement shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs. Institutions that serve children

and their families shall, considering available resources, provide similar training to institutional staff.

B. The training shall include study of:

(1) cross-cultural dynamics and sensitivity;

(2) child development;

(3) family composition and dynamics;

(4) parenting skills and practices;

(5) culturally appropriate treatment plans; and

(6) alternative health practices."

Chapter 254 Section 5

Section 5. REPEAL.--Section 32A-6-10.1 NMSA (being Laws 1995, Chapter 207, Section 11) is repealed.

Chapter 254 Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 542

CHAPTER 255

RELATING TO ELECTED OFFICIALS; RAISING THE COMPENSATION OF ANY PERSON SERVING AS ACTING GOVERNOR.

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

Chapter 255 Section 1

Section 1. Section 8-1-1 NMSA 1978 (being Laws 1971, Chapter 260, Section 1, as amended) is amended to read:

"8-1-1. COMPENSATION OF ELECTIVE STATE OFFICERS.--

A. Annual compensation of elective state officers shall be paid as follows:

governor...$90,000

secretary of
state...65,000

state
auditor...65,000

state
treasurer...65,000

attorney
general..72,500

commissioner of public
lands...72,500

public regulation
commissioner...72,500.

B. Any person succeeding to the office of governor as provided in Article 5, Section 7 of the constitution of New Mexico shall receive the salary of the office. Every person serving as acting governor during the incapacity or absence of the governor from the state, other than the secretary of state, shall receive two hundred fifty dollars ($250) as compensation for each day's service as acting governor.

C. All compensation under this section shall be paid from the general fund, except that the amount paid to the commissioner of public lands shall be paid from the state lands maintenance fund."

SENATE BILL 703

CHAPTER 256

RELATING TO TAXATION; PROVIDING FOR THE REDUCTION OF OIL AND GAS SEVERANCE TAX AND OIL AND GAS EMERGENCY SCHOOL TAX RATES DURING CERTAIN LOW-PRICE PERIODS FOR OIL AND NATURAL GAS PRODUCED FROM STRIPPER WELL PROPERTIES; CHANGING CERTAIN PROVISIONS FOR WELL WORKOVER PROJECTS AND THE RATE OF THE OIL AND GAS SEVERANCE TAX APPLICABLE TO NATURAL GAS AND OIL PRODUCTION FROM SUCH PROJECTS; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 256 Section 1

Section 1. Section 7-29-2 NMSA 1978 (being Laws 1959, Chapter 52, Section 2, as amended) is amended to read:

"7-29-2. DEFINITIONS.--As used in the Oil and Gas Severance Tax Act:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

I. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, co-partnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

J. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment that is determined by the value of such products;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act, for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993, as approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

P. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

Q. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

R. "tax" means the oil and gas severance tax."

Chapter 256 Section 2

Section 2. Section 7-29-4 NMSA 1978 (being Laws 1980, Chapter 62, Section 5, as amended) is amended to read:

"7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED-- COLLECTION--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraphs (4), (6) and (7) of this subsection, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3), (5), (8) and (9) of this subsection, three and three-fourths percent of taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(3) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project, one and seven-eighths

percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars ($28.00) per barrel;

(4) on the natural gas from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars ($24.00) per barrel;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars ($24.00) per barrel;

(6) on the natural gas from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided

the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents ($1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(7) on the natural gas from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents ($1.15) per thousand cubic feet but not more than one dollar thirty-five cents ($1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(8) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars ($15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(9) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars ($15.00) per barrel but not more than eighteen dollars ($18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(10) on carbon dioxide, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars ($24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars ($24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax"."

Chapter 256 Section 3

Section 3. Section 7-29B-2 NMSA 1978 (being Laws 1995, Chapter 15, Section 2, as amended) is amended to read:

"7-29B-2. DEFINITIONS.--As used in the Natural Gas and Crude Oil Production Incentive Act:

A. "average annual taxable value" means the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

B. "average daily production" means, for any crude oil or natural gas property assigned a single production number by the department, the number derived by dividing the total volume of crude oil or natural gas production from the property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year;

C. "department" means the taxation and revenue department;

D. "division" means the oil conservation division of the energy, minerals and natural resources department;

E. "eligible well" means a crude oil or natural gas well that produces or an injection well that injects and is integral to production for any period of time during the preceding calendar year;

F. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;

G. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;

H. "person" means any individual or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;

I. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

J. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993 as approved and certified by the division;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

M. "stripper well incentive tax rates" means the tax rates set forth in Paragraphs (6) through (9) of Subsection A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7) of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or oil produced from a well within a stripper well property;

N. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced from a well workover project; and

O. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division."

Chapter 256 Section 4

Section 4. Section 7-29B-3 NMSA 1978 (being Laws 1995, Chapter 15, Section 3, as amended) is amended to read:

"7-29B-3. APPROVAL OF PRODUCTION RESTORATION PROJECTS, WELL WORKOVER PROJECTS AND STRIPPER WELL PROPERTIES.--

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a production restoration project and the application is made within twelve months of the completion of the production restoration project; and

(2) the division records show that the well had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure performed by the operator of the well is a procedure to increase the production from the well, but is not routine maintenance performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recomplete for production;

(b) recompletion by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment; or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division evidence of a positive production increase over the production rate of the well prior to the workover. The operator must submit a production curve or tabulation made up of at least twelve months' production prior to the workover and at least three months' production following the workover that reflects a positive production increase from the workover. The production curve or tabulation must be certified by the operator as that of the well on which a workover was performed.

C. A natural gas or crude oil producing property shall be approved and certified by the division as a stripper well property if the division records show that the property is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil."

Chapter 256 Section 5

Section 5. Section 7-29B-4 NMSA 1978 (being Laws 1995, Chapter 15, Section 4) is amended to read:

"7-29B-4. APPLICATION PROCEDURES--CERTIFICATION OF APPROVAL--RULES--ADMINISTRATION.--

A. The operator of a proposed production restoration project or well workover project shall apply to the division for approval of a production restoration project or a well workover project in the form and manner prescribed by the division and shall provide any relevant material and information the division requires for that approval.

B. Upon a determination that the project complies with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act, the division shall approve the application and shall issue a certification of approval to the operator and designate the natural gas or oil well as a production restoration project or well workover project, as applicable.

C. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules to carry out the provisions of the Natural Gas and Crude Oil Production Incentive Act.

D. The division shall consider and approve applications for approval of a production restoration project or well workover project without holding hearings on the applications. If the division denies approval of an application pursuant to such a process, the division, upon the request of the applicant, shall set a hearing of the application before an examiner appointed by the division to conduct the hearing. The hearing shall be conducted in accordance with the provisions of the Oil and Gas Act for such hearings."

Chapter 256 Section 6

Section 6. Section 7-29B-5 NMSA 1978 (being Laws 1995, Chapter 15, Section 5) is amended to read:

"7-29B-5. NOTICE TO SECRETARY OF TAXATION AND REVENUE.--The division shall notify immediately the secretary of taxation and revenue upon:

A. adoption of rules pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act;

B. certification of the date that production has been restored on a production restoration project;

C. certification of the date that a well workover project has been completed; and

D. certification of the stripper well properties for the fiscal year."

Chapter 256 Section 7

Section 7. Section 7-29B-6 NMSA 1978 (being Laws 1995, Chapter 15, Section 6) is amended to read:

"7-29B-6. QUALIFICATION FOR PRODUCTION RESTORATION INCENTIVE TAX EXEMPTION AND WELL WORKOVER AND STRIPPER WELL PROPERTY INCENTIVE TAX RATE--SECRETARY OF TAXATION AND REVENUE APPROVAL--REFUND.-

A. The person responsible for paying the oil and gas severance tax on natural gas or oil produced from a production restoration project shall qualify to receive a ten-year production restoration incentive tax exemption upon:

(1) application to the department in the form and manner prescribed by the department for approval for the ten-year production restoration incentive tax exemption;

(2) submission of the certification of approval from the division and designation of the natural gas or oil well as a production restoration project; and

(3) submission of any other relevant material that the secretary of taxation and revenue deems necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

B. The person responsible for payment of the oil and gas severance tax on natural gas or oil produced from a well workover project shall qualify for the well workover incentive tax rate on all the natural gas or oil produced by that project upon:

(1) application to the department in the form and manner prescribed by the department for approval to apply the well workover incentive tax rate to the natural gas or oil produced from a well workover project;

(2) submission of the certification from the division of approval and designation of the natural gas or oil well as a well workover project; and

(3) any other relevant material that the department considers necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

C. The person responsible for paying the oil and gas severance tax and the oil and gas emergency school tax on natural gas and crude oil produced from a stripper well property shall qualify to receive the stripper well property incentive tax rate for the fiscal year following certification by the division in the form and manner agreed to by the division and the department designating the property as a stripper well property. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

D. The production restoration incentive tax exemption shall apply to natural gas or oil produced from a production restoration project beginning the first day of the month following the date the division certifies that production has been restored and ending the last day of the tenth year of production following that date. The well workover incentive tax rate applies to the natural gas or oil produced from a well workover project beginning the first day of the month following the date the division certifies that the well workover project has been completed. The stripper well property incentive tax rates apply to the natural gas or oil produced from a stripper well property in the twelve months beginning May 1 prior to July 1 of the fiscal year to which the certification of the property as a stripper well property applies.

E. The person responsible for payment of the oil and gas severance tax on natural gas or oil production from an approved well workover project may file a claim for credit against current tax liability or for refund in accordance with Section 7-1-26 NMSA 1978 for taxes paid in excess of the amount due using the well workover incentive tax rate. Notwithstanding the provisions of Subsection E of Section 7-1-26 NMSA 1978, any such refund granted shall be made in the form of a credit against any future oil and gas severance tax liabilities incurred by the taxpayer.

F. Well workover projects certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of this 1999 act and natural gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective beginning July 1, 1999.

G. The secretary of taxation and revenue may adopt and promulgate rules to enforce the provisions of this section."

Chapter 256 Section 8

Section 8. Section 7-31-2 NMSA 1978 (being Laws 1959, Chapter 54, Section 2, as amended) is amended to read:

"7-31-2. DEFINITIONS.--As used in the Oil and Gas Emergency School Tax Act:

A. "commission", "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received from products at the production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, limited liability company or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment which is determined by the value of such products;

J. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil; and

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

L. "tax" means the oil and gas emergency school tax."

Chapter 256 Section 9

Section 9. Section 7-31-4 NMSA 1978 (being Laws 1959, Chapter 54, Section 4, as amended) is amended to read:

"7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (4) and (5) of this subsection, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(3) on natural gas, except as provided in Paragraphs (6) and (7) of this subsection, four percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(4) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and fifty-eight hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars ($15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirty-six hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars ($15.00) per barrel but not more than eighteen dollars ($18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper well property, two percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents

($1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(7) on the natural gas removed from a stripper well property, three percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents ($1.15) per thousand cubic feet but not more than one dollar thirty-five cents ($1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of the products or to the extent of his interest as may be measured by the value of the products.

C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law."

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILLS 281 AND 436

CHAPTER 257

RELATING TO THE PUBLIC BUILDING ENERGY EFFICIENCY AND WATER CONSERVATION ACT; PROVIDING THAT OPERATING COST SAVINGS MAY BE USED TO PAY GUARANTEED UTILITY SAVINGS CONTRACTS; PROVIDING THAT SPECIAL FUNDS OF INSTITUTIONS MAY BE PLEDGED FOR PAYMENTS.

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

Chapter 257 Section 1

Section 1. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3, as amended) is amended to read:

"6-23-3. ENERGY EFFICIENCY AND WATER CONSERVATION CONTRACTS AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation-related operating costs if, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy or water conservation measures, or both, recommended in the proposal is not likely to exceed the amount to

be saved in energy and conservation-related operational costs over ten years from the date of installation if the recommendations in the proposal were followed; and

(2) the qualified provider can provide a written guarantee that the energy, water or conservation-related operating cost savings will meet or exceed the costs of the system.

B. A guaranteed utility savings contract shall include a written guarantee from the qualified provider that annual savings shall meet or exceed the cost of the energy or water conservation measures, or both.

C. A guaranteed utility savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed ten years; provided, however, only special funds authorized pursuant to the Public Building Energy Efficiency and Water Conservation Act or other law shall be pledged for the payments.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures, or both, pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Building Energy Efficiency and Water Conservation Act.

E. A governmental unit may enter into a utility savings contract pursuant to Section 13-1-129 NMSA 1978 in accordance with the provisions of the Public Building Energy Efficiency and Water Conservation Act."

Chapter 257 Section 2

Section 2. Section 6-23-5 NMSA 1978 (being Laws 1993, Chapter 231, Section 5, as amended) is amended to read:

"6-23-5. CONTRACT APPROVAL REQUIRED.--

A. A governmental unit shall not enter into a guaranteed utility savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract unless the contracts and agreements are reviewed and approved as follows:

(1) for school districts, by the superintendent of public instruction;

(2) for state agencies, by the secretary of general services;

(3) for municipalities and counties, by the secretary of finance and administration; and

(4) for all post-secondary educational institutions and the state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, by the commission on higher education.

B. The approval required under this section shall be given upon:

(1) a determination that the contracts and agreements comply with the provisions of the Public Building Energy Efficiency and Water Conservation Act and other applicable law;

(2) certification by the energy, minerals and natural resources department that the qualified provider of energy conservation measures meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable; and

(3) certification by the state engineer's office that the qualified provider of water conservation measures meets the experience requirements set by that office and the guaranteed water savings from the water conservation measures proposed appear to be accurately estimated and reasonable."

Chapter 257 Section 3

Section 3. Section 6-23-6.1 NMSA 1978 (being Laws 1997, Chapter 42, Section 7) is amended to read:

"6-23-6.1. REPORTING AND RETENTION OF UTILITY COST SAVINGS FOR STATE AGENCIES.--

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, which estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

(1) the name or description of each facility or major utility system covered by the report;

(2) utility account numbers;

(3) a record of monthly consumption of water, energy by fuel type, or both; and

(4) a record of monthly per-unit cost of water, energy by fuel type, or both.

B. If the consumption and savings report for a state agency shows a utility or conservation-related operating cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, the dollar amount of the

energy, water or conservation-related operating cost savings shall be carried over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the utility cost savings and conservation-related operating cost savings measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than ten years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

(1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;

(2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and

(3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or ten years, whichever is less, new budgets or appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of energy, water or conservation-related operating cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures, or both, or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures, or both, or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the general fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico eligible to receive income from lands granted for the use of certain institutions and deposited in income funds pursuant to Section 19-1-17 NMSA 1978. "State agency" does not include a municipality, county or school district."

Chapter 257 Section 4

Section 4. Section 6-23-10 NMSA 1978 (being Laws 1993, Chapter 231, Section 10, as amended) is amended to read:

"6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--Income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 and special funds of institutions may be appropriated and pledged for payments pursuant to any guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Building Energy Efficiency and Water Conservation Act. Any money so appropriated shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be pledged for payments pursuant to the Public Building Energy Efficiency and Water Conservation Act."

HOUSE BILL 425, AS AMENDED

CHAPTER 258

RELATING TO PUBLIC PURCHASING; AMENDING SECTIONS OF THE PROCUREMENT CODE; MODIFYING THE DEFINITION OF LOCAL PUBLIC BODIES AND OF EXEMPT MINOR PURCHASES; EXEMPTING CERTAIN LITIGATION EXPENSES.

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

Chapter 258 Section 1

Section 1. Section 13-1-67 NMSA 1978 (being Laws 1984, Chapter 65, Section 40) is amended to read:

"13-1-67. DEFINITION--LOCAL PUBLIC BODY.--"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions."

Chapter 258 Section 2

Section 2. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials which are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to regulations adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers; and

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts."

HOUSE BILL 512

CHAPTER 259

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE ENGINEERING AND SURVEYING PRACTICE ACT; CHANGING PROFESSIONAL REQUIREMENTS FROM REGISTRATION TO LICENSURE.

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

Chapter 259 Section 1

Section 1. Section 61-23-2 NMSA 1978 (being Laws 1987, Chapter 336, Section 2, as amended) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice or offer to practice in New Mexico or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable."

Chapter 259 Section 2

Section 2. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

A. "approved" or "approval" means acceptable to the board;

B. "board" means the state board of licensure for professional engineers and surveyors;

C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;

E. "engineering" or "practice of engineering" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "fund" means the professional engineers' and surveyors' fund;

I. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

J. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

K. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is licensed by the board to practice the profession of engineering;

L. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

M. "surveying" or "practice of surveying" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls for surveys for design, topographic surveys, including photogrammetric methods, construction surveys of engineering and architectural public works projects; and

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

N. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying;

O. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

P. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act; and

Q. "surveying work" means the work performed in the practice of surveying.

The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A registered professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey. Engineering surveys may be performed by a licensed professional engineer on a project for which he is providing engineering design services. Engineering surveys include topographic surveying activities required to support the sound conception, planning, design, construction, maintenance and operation of said projects but exclude the surveying of real property for establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system."

Chapter 259 Section 3

Section 3. Section 61-23-5 NMSA 1978 (being Laws 1987, Chapter 336, Section 5, as amended) is amended to read:

"61-23-5. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS--MEMBERS--TERMS.--

A. There is created the "state board of licensure for professional engineers and surveyors" which shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term."

Chapter 259 Section 4

Section 4. Section 61-23-6 NMSA 1978 (being Laws 1987, Chapter 336, Section 6, as amended) is amended to read:

"61-23-6. BOARD MEMBERS--QUALIFICATIONS.--

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years, or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years, and shall be a professional engineer licensed in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years, and shall be a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated."

Chapter 259 Section 5

Section 5. Section 61-23-9 NMSA 1978 (being Laws 1987, Chapter 336, Section 9, as amended) is amended to read:

"61-23-9. BOARD--ORGANIZATION--MEETINGS.--

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed professional engineers and one of the public members, who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee.

The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a "surveying committee" composed of the three members of the board who serve as licensed professional surveyors and one of the public members, who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other qualified board members may serve on this committee. The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board.

D. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chairman, a vice chairman and a secretary, who shall be members of the board. No member of the board shall be elected to the same office for two consecutive full terms. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal."

Chapter 259 Section 6

Section 6. Section 61-23-10 NMSA 1978 (being Laws 1987, Chapter 336, Section 10, as amended) is amended to read:

"61-23-10. DUTIES AND POWERS OF THE BOARD.--

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act and to exercise the authority granted the board in that act. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chairperson's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

D. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

E. The board may subject an applicant for licensure to such examinations as it deems necessary to determine his qualifications.

F. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

G. No action or other legal proceedings for damages shall be instituted against the board, any board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

H. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

I. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical regulations of the board and the board of examiners for architects."

Chapter 259 Section 7

Section 7. Section 61-23-11 NMSA 1978 (being Laws 1987, Chapter 336, Section 11, as amended) is amended to read:

"61-23-11. RECEIPTS AND DISBURSEMENT--FUND CREATED.--

A. The "professional engineers' and surveyors' fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in the fund. Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the chairman and attested by the executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose."

Chapter 259 Section 8

Section 8. Section 61-23-12 NMSA 1978 (being Laws 1987, Chapter 336, Section 12, as amended) is amended to read:

"61-23-12. RECORDS AND REPORTS.--

A. The board shall keep a record of its proceedings and a register of all applications for licensure, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

(1) examination material for examinations not yet given;

(2) file records of examination problem solutions;

(3) letters of inquiry and reference concerning applicants;

(4) board inquiry forms concerning applicants;

(5) investigation files where any investigation is ongoing or is still pending; and

(6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chairman, secretary and executive director."

Chapter 259 Section 9

Section 9. Section 61-23-13 NMSA 1978 (being Laws 1987, Chapter 336, Section 13, as amended) is amended to read:

"61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND SURVEYORS.--A roster showing the names and addresses of all licensed professional engineers and professional surveyors shall be prepared by the executive director of the board prior to September 1 of each even-numbered year. A supplement to the roster shall be prepared by the executive director of the board prior to September 1 of each odd-numbered year. Copies of the roster and supplement shall be made available to each licensee no later than November 30 of each year, shall be placed on file with the secretary of state and the state commission of public records and may be distributed or sold to the public."

Chapter 259 Section 10

Section 10. Section 61-23-14 NMSA 1978 (being Laws 1993, Chapter 218, Section 11) is amended to read:

"61-23-14. CERTIFICATION AS AN ENGINEER INTERN--REQUIREMENTS.--

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a licensed professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern. An applicant who has made three unsuccessful attempts at achieving a passing score on the examination shall be eligible to take the examination only after waiting a calendar year. Thereafter, the applicant may take the examination no more than once each calendar year.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that he has:

(1) graduated from a board-approved, four-year engineering curriculum; or

(2) graduated from a board-approved, four-year engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering."

Chapter 259 Section 11

Section 11. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12) is amended to read:

"61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--REQUIREMENTS.--

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as an engineer intern;

(3) has five references, three of whom shall be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the

applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board provided a satisfactory written explanation is given; and either

(4) has at least four years of approved engineering experience after graduation from a board-approved engineering curriculum; or

(5) has a minimum of six years of approved engineering experience after graduation from a board-approved four-year engineering technology curriculum.

B. After the applicant's application is approved by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional engineer.

C. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if:

(1) he is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States, provided the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) he is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board his competence in current engineering standards and procedures."

Chapter 259 Section 12

Section 12. Section 61-23-18 NMSA 1978 (being Laws 1987, Chapter 336, Section 18, as amended) is amended to read:

"61-23-18. ENGINEERING--EXAMINATIONS.--The examinations for engineering certification and licensure shall be held at least once a year at a time and place the board directs. The engineering committee shall determine the passing grade on examinations."

Chapter 259 Section 13

Section 13. Section 61-23-19 NMSA 1978 (being Laws 1987, Chapter 336, Section 19, as amended) is amended to read:

"61-23-19. ENGINEERING--CERTIFICATE--SEALS.--

A. The board shall issue certificates of licensure pursuant to the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to his work as an engineer, provided the engineer shall not hold himself out to be an architect or as performing architectural services unless duly registered as such."

Chapter 259 Section 14

Section 14. Section 61-23-20 NMSA 1978 (being Laws 1987, Chapter 336, Section 20, as amended) is amended to read:

"61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES--EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. The initial licensure fee shall be computed proportionately to the amount of time remaining in the biennial licensure period.

B. The board shall establish by rule a biennial fee for professional engineers. Licensure renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. Each licensee's shall have the responsibility to notify the board of any change of address.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve

months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired. The board may adopt rules for inactive and retired status."

Chapter 259 Section 15

Section 15. Section 61-23-21 NMSA 1978 (being Laws 1987, Chapter 336, Section 21, as amended) is amended to read:

"61-23-21. PRACTICE OF ENGINEERING.--

A. No firm, partnership, corporation or joint stock association shall be licensed pursuant to the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the practice, shall bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through a joint stock association or corporation, services or work involving the practice of engineering may be offered through that joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute engineering practice is a professional engineer who has authority to bind such joint stock association or corporation by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, issued by or for such joint stock association or corporation, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless

that individual, firm, partnership, corporation or joint stock association is qualified to practice engineering in accordance with the requirements in this section."

Chapter 259 Section 16

Section 16. Section 61-23-24 NMSA 1978 (being Laws 1993, Chapter 218, Section 18) is amended to read:

"61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY

ACTION--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars ($5,000), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

(1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use as his own the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional engineer by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered" or "engineering" so long as such words are not used in an offer

to the public to perform engineering work as defined in Subsections E and K of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. Any person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against any licensed engineer. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in Subsection D, E, or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits, provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, providing a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of such reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

I. The board shall prepare and adopt rules of professional responsibility for professional engineers as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend the rules of

professional responsibility for professional engineers from time to time and shall notify each licensee in writing of such revisions or amendments.

J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars ($5,000) or by imprisonment of no more than one year, or both.

K. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

L. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county that the violation occurs."

Chapter 259 Section 17

Section 17. Section 61-23-26 NMSA 1978 (being Laws 1987, Chapter 336, Section 26, as amended) is amended to read:

"61-23-26. PUBLIC WORK.--

A. It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving engineering unless the plans and specifications involving engineering have been prepared by and are under the responsible charge of a licensed professional engineer and the public work involving professional surveying has been executed under the responsible charge of a licensed professional surveyor. Nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the complete project does not exceed one hundred thousand dollars ($100,000), except for public work involving structural design, structural modifications or surveying.

B. The Engineering and Surveying Practice Act shall not apply to construction surveys of engineering and architectural public works projects, the anticipated construction cost of which is less than one hundred thousand dollars ($100,000)."

Chapter 259 Section 18

Section 18. Section 61-23-27 NMSA 1978 (being Laws 1987, Chapter 336, Section 27, as amended) is amended to read:

"61-23-27. ENGINEERING--PUBLIC OFFICER--LICENSURE REQUIRED.--No person except a licensed professional engineer shall be eligible to hold any responsible office

or position for the state or any political subdivision of the state that includes the performance or responsible charge of engineering work."

Chapter 259 Section 19

Section 19. Section 61-23-27.3 NMSA 1978 (being Laws 1993, Chapter 218, Section 24) is amended to read:

"61-23-27.3. CERTIFICATION OF SURVEYOR INTERN--REQUIREMENTS.--

A. An applicant for certification as a surveyor intern shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved four-year curriculum in surveying; and

(3) has three references, two of whom shall be licensed professional surveyors having personal knowledge of the applicant's knowledge and experience.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

C. Upon successfully completing the examination and an approved four-year surveying curriculum, then by action of the board, the applicant may be certified as a surveyor intern.

D. The certification of surveyor intern does not permit the intern to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

E. If otherwise qualified, a graduate of a board-approved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of four years of combined office and field board-approved surveying experience obtained under the direction of a licensed professional surveyor. Time spent in obtaining the related curriculum will not be counted in the four years of required experience."

Chapter 259 Section 20

Section 20. Section 61-23-27.4 NMSA 1978 (being Laws 1993, Chapter 218, Section 25) is amended to read:

"61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR--GENERAL REQUIREMENTS.--

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as a surveyor intern;

(3) has at least four years of approved surveying experience if graduated from a four-year board- approved surveying curriculum or has a minimum of eight years of board-approved surveying experience if graduated from a four-year board-approved related science curriculum; and

(4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience pursuant to Paragraph (3) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if he is currently licensed as a professional surveyor in:

(1) the District of Columbia, another state, a territory or a possession of the United States, provided that:

(a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and

(b) the applicant has passed examinations the board deems necessary to determine his qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and

(b) his competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico."

Chapter 259 Section 21

Section 21. Section 61-23-27.5 NMSA 1978 (being Laws 1993, Chapter 218, Section 26) is amended to read:

"61-23-27.5. SURVEYING--APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of his technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

Chapter 259 Section 22

Section 22. Section 61-23-27.6 NMSA 1978 (being Laws 1993, Chapter 218, Section 27) is amended to read:

"61-23-27.6. SURVEYING--EXAMINATIONS.--The examinations for surveying certification and licensure shall be held at least once a year at a time and place the board directs. The surveying committee shall determine the passing grade on examinations."

Chapter 259 Section 23

Section 23. Section 61-23-27.7 NMSA 1978 (being Laws 1993, Chapter 218, Section 28) is amended to read:

"61-23-27.7. SURVEYING--LICENSURE AND RENEWAL FEES--EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. The initial licensure fee shall be computed proportionately to the amount of time remaining in the biennial licensure period.

B. The board shall establish by rule a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to maintain the certificate of licensure current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every certificate of licensure shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired."

Chapter 259 Section 24

Section 24. Section 61-23-27.8 NMSA 1978 (being Laws 1993, Chapter 218, Section 29) is amended to read:

"61-23-27.8. SURVEYING CERTIFICATES AND SEALS.--

A. The board shall issue certificates of licensure pursuant to the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals."

Chapter 259 Section 25

Section 25. Section 61-23-27.9 NMSA 1978 (being Laws 1993, Chapter 218, Section 30) is amended to read:

"61-23-27.9. SURVEYING--PRACTICE OF SURVEYING.--

A. No firm, partnership, corporation or joint stock association shall be licensed pursuant to the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice surveying in the state except as provided in that act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor pursuant to that act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a joint stock association or corporation, services or work involving the practice of surveying may be offered through the joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports that are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section."

Chapter 259 Section 26

Section 26. Section 61-23-27.10 NMSA 1978 (being Laws 1993, Chapter 218, Section 31) is amended to read:

"61-23-27.10. SURVEYING EXEMPTIONS.--An employee of a firm, association or corporation who performs only the surveying services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that neither the employee nor the employer offers surveying services to the public, and provided that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land."

Chapter 259 Section 27

Section 27. Section 61-23-27.11 NMSA 1978 (being Laws 1993, Chapter 218, Section 32) is amended to read:

"61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY ACTIONS--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars ($5,000), place on probation for a specific period of time with specific conditions or reprimand any professional surveyor who is found by the board to have:

(1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use as his own the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional surveyor by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.

B. The board may by rule establish the guidelines

for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

C. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall

be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any licensee. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E, or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board, or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, provided a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

H. The board shall prepare and adopt rules of professional responsibility for professional surveyors as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Such publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend these rules of professional responsibility for professional surveyors from time to time and shall notify each licensee in writing of the revisions or amendments.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars ($5,000) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

K. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs."

Chapter 259 Section 28

Section 28. Section 61-23-27.13 NMSA 1978 (being Laws 1993, Chapter 218, Section 34) is amended to read:

"61-23-27.13. SURVEYING--PUBLIC WORK.--It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor."

Chapter 259 Section 29

Section 29. Section 61-23-27.14 NMSA 1978 (being Laws 1993, Chapter 218, Section 35) is amended to read:

"61-23-27.14. SURVEYING--PUBLIC OFFICER--LICENSURE REQUIRED.--No person except a licensed professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that requires the performance or responsible charge of surveying work."

Chapter 259 Section 30

Section 30. Section 61-23-28 NMSA 1978 (being Laws 1987, Chapter 336, Section 28) 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 and county surveyor 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 259 Section 31

Section 31. Section 61-23-30 NMSA 1978 (being Laws 1987, Chapter 336, Section 30) is amended to read:

"61-23-30. RIGHT OF ENTRY ON PUBLIC AND PRIVATE PROPERTY--RESPONSIBILITY.--The engineers and surveyors of the United States and licensed professional engineers and surveyors of the state shall have the right to enter upon the lands and waters of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property or for injuries resulting from negligence or malice caused on account of that entry."

Chapter 259 Section 32

Section 32. Section 61-23-31 NMSA 1978 (being Laws 1987, Chapter 336, Section 31, as amended) is amended to read:

"61-23-31. LICENSURE UNDER PRIOR LAWS.--Any person holding a valid license as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern or surveyor intern granted by the board pursuant to any prior law of New Mexico shall not be required to make a new application or to submit to an examination, but shall be entitled to the renewal of licensure upon the terms and conditions of the Engineering and Surveying Practice Act."

Chapter 259 Section 33

Section 33. 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, 2005 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, 2006. Effective July 1, 2006, the Engineering and Surveying Practice Act is repealed."

Chapter 259 Section 34

Section 34. A new section of the Engineering and Surveying Practice Act is enacted to read:

"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 file and the county clerk shall accept and record a plat of survey entitled "boundary survey plat" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey plat 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;

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches; and

(5) consist of two black-line copies, one of which the county clerk's office may require to be a mylar copy, made by the surveyor from a mylar original, which shall be maintained in the professional surveyor's files. One of the two black-line copies shall be filed and recorded by the county clerk and the other, containing recording information, shall be delivered by the county clerk to the county assessor.

B. Fees for recording a boundary survey plat shall be in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978. The county clerk shall keep a proper index of boundary survey plats by the name of the subdivision, if applicable; owner; and by section, township and range or projected section, township and range if the subject tract is in a land grant. The records shall be kept in conformance with Sections 14-8-12 through 14-8-16 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 filed within sixty calendar days after completion of the survey or approval by the governing authority. The county clerk shall keep a proper index of land division plats by the name of the subdivision; by section, township and range or projected section, township and range if the subject tract is in a land grant; and by the number assigned to the land division plat by the local planning department, if applicable. The records shall be kept in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978."

Chapter 259 Section 35

Section 35. REPEAL.--Sections 61-23-27.1, 61-23-27.2 and 61-23-28.1 NMSA 1978 (being Laws 1993, Chapter 218, Sections 22, 23 and 36, as amended) are repealed.

Chapter 259 Section 36

Section 36. SEVERABILITY.--If any part or application of the Engineering and Surveying Practice Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

HOUSE BILL 559, AS AMENDED

CHAPTER 260

CREATING THE STATE WORKFORCE DEVELOPMENT BOARD AND LOCAL BOARDS; DEFINING THEIR POWERS AND DUTIES.

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

Chapter 260 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Workforce Development Act".

Chapter 260 Section 2

Section 2. DEFINITIONS.--As used in the Workforce Development Act:

A. "board" means the state workforce development board;

B. "chief elected official" means the chief elected executive officer of a unit of general local government in a local area and in a case in which a local area includes more than one unit of general local government, "chief elected official" means the person designated pursuant to the federal Workforce Investment Act of 1998;

C. "job corps" means the job corps provided for in the federal Workforce Investment Act of 1998;

D. "local board" means a local workforce development board;

E. "person" means an individual; and

F. "representative of business" means the person:

(1) is an owner, chief executive or operating officer of a business, or a business executive or employer with optimum policymaking or hiring authority, or a member of a local board;

(2) represents businesses with employment opportunities that reflect the employment opportunities of the state; and

(3) is appointed from among persons nominated by state business organizations and business trade associations.

Chapter 260 Section 3

Section 3. STATE WORKFORCE DEVELOPMENT BOARD.--

A. The "state workforce development board" is created. The board consists of members as provided in the federal Workforce Investment Act of 1998 as follows:

(1) the governor;

(2) the speaker of the house of representatives shall appoint two members of the house of representatives;

(3) the president pro tempore shall appoint two members from the senate; and

(4) the governor shall appoint:

(a) the secretary of economic development;

(b) the secretary of human services;

(c) the secretary of labor;

(d) the superintendent of public instruction;

(e) representatives of business to ensure that a majority of the members of the board are representatives of business;

(f) two representatives of organized labor nominated by organized labor;

(g) two chief elected officials;

(h) two representatives of organizations that have special knowledge and experience of youth training activities;

(i) two representatives of organizations that have experience and expertise in the delivery of workforce investment activities, including one chief executive officer of a community college; and

(j) one community-based organization that conducts training activities.

B. In making the appointments, the speaker of the house, the president pro tempore and the governor shall consider gender, ethnicity and geographic diversity.

C. A vacancy on the board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

D. All terms shall be for four years.

E. A majority of the members of the board shall be representatives of business who are owners of businesses, chief executives or operating officers of businesses and other business executives or employers with optimum policymaking or hiring authority, including members of local boards.

F. The governor shall appoint one of the business representatives as chairman of the board.

G. The board shall meet at the call of the chairman.

H. A majority of the board members constitutes a quorum.

I. Members are eligible to be paid pursuant to the Per Diem and Mileage Act.

J. A member of the board may not vote on a matter under consideration by the board relating to provision of services by the member or by the entity the member represents, or that would provide direct financial benefit to the member or his immediate family, or that is an activity determined by the governor to be a conflict of interest as provided in the state plan prepared pursuant to the federal Workforce Investment Act of 1998.

Chapter 260 Section 4

Section 4. DUTIES OF THE BOARD.--

A. The board shall assist the governor to:

(1) develop a five-year state plan that shall be updated annually and revised in accordance with the requirements of the federal Workforce Investment Act of 1998;

(2) develop and improve the statewide activities funded pursuant to the workforce investment system and the one-stop delivery system, including development of linkages to assure coordination and nonduplication among the programs and activities described in the federal Workforce Investment Act of 1998;

(3) review local plans;

(4) comment annually on the measures taken pursuant to Section 113(b)(14) of the Carl D. Perkins Vocational and Applied Technology Education Act;

(5) develop allocation formulas for adult and youth employment and training activity funds to local areas in accordance with the federal Workforce Investment Act of 1998;

(6) develop comprehensive state performance measures to assess the effectiveness of workforce investment activities pursuant to the federal Workforce Investment Act of 1998;

(7) designate local workforce development areas;

(8) develop the statewide employment statistics system; and

(9) prepare reports and applications required for submission to the federal government.

B. The board shall also:

(1) review, evaluate and report annually on the performance of all workforce development activities administered by state agencies involved with workforce development;

(2) develop linkages with the state board of education to ensure coordination and nonduplication of vocational education, apprenticeship, adult education and vocational rehabilitation programs with other workforce development and training programs; and

(3) provide policy advice regarding the application of federal or state law that pertains to workforce development.

C. All state agencies involved in workforce development activities shall annually submit to the board for its review and potential inclusion in the five-year plan their goals, objectives and policies. The plan shall include recommendations to the legislature on the modification, consolidation, initiation or elimination of workforce training and education programs in the state.

Chapter 260 Section 5

Section 5. LOCAL WORKFORCE DEVELOPMENT AREAS--LOCAL BOARDS--DUTIES AND RESPONSIBILITIES.--

A. The governor shall designate specified local workforce development areas based on population and geographic configuration and consistent with provisions of the federal Workforce Investment Act of 1998 upon recommendation of the board and consideration of needs expressed by chief elected officials, business, labor and other interested parties.

B. The chief elected officials of each workforce development area shall establish a local board and appoint members based on the criteria established by the governor, the board and the federal Workforce Investment Act of 1998.

C. Each local board shall:

(1) advise the board on issues relating to regional and local workforce development needs;

(2) develop and submit to the board and governor a local five-year workforce plan that shall be updated and revised annually in accordance with requirements of the federal Workforce Investment Act of 1998;

(3) designate or certify one-stop program operators in accordance with the federal Workforce Investment Act of 1998;

(4) terminate, for cause, the eligibility of one-stop operators;

(5) select and provide grants to youth activity providers in accordance with the federal Workforce Investment Act of 1998;

(6) identify eligible training and intensive service providers in accordance with the federal Workforce Investment Act of 1998;

(7) develop a budget subject to the approval of the chief elected official;

(8) develop and negotiate local performance measurements as described in the federal Workforce Investment Act of 1998 with the chief elected official and the governor;

(9) assist in development of an employment statistics system;

(10) ensure linkages with economic development activities;

(11) encourage employer participation and assist employers in meeting hiring needs;

(12) in partnership with the chief elected official, conduct oversight of local programs of youth activities authorized pursuant to the federal Workforce Investment Act of 1998 and employment and training activities pursuant to that act, and the one-stop delivery system in the local area;

(13) establish as a subgroup a youth council, appointed by the local board in cooperation with the chief elected official; and

(14) prior to submission of the local plan, provide information regarding the following:

(a) the local plan;

(b) membership;

(c) designation and certification of one-step operators; and

(d) the award of grants or contract to eligible providers of youth activities.

D. The local board shall be appointed in accordance with criteria established by the governor with a minimum of fifty-one percent of its members coming from the private sector and shall include representation of education, labor, government, economic development and community-based organizations and others as appropriate and shall be appointed or ratified by the local chief public official.

E. Nothing in the Workforce Development Act shall be construed to provide a local board with the authority to mandate curricula for schools.

F. A member of the local board may not vote on a matter under consideration by the local board relating to provision of services by the member or by the entity the member represents, or that would provide direct financial benefit to the member or his immediate family, or that is an activity determined by the governor to be a conflict of interest as provided in the state plan prepared pursuant to the federal Workforce Investment Act of 1998.

Chapter 260 Section 6

Section 6. YOUTH COUNCILS--MEMBERSHIP--DUTIES.--

A. The membership of each youth council shall include:

(1) members of the local board with interest or expertise in youth policy; representatives of youth service agencies, including juvenile justice and law enforcement agencies; and representatives of local public housing;

(2) parents of eligible youth seeking assistance;

(3) persons, including former participants as defined pursuant to the New Mexico Works Act, and representatives of organizations, that have experience relating to youth activities;

(4) representatives of job corps, as appropriate; and

(5) other persons that the chairman of the local board, in cooperation with the chief elected official, determines to be appropriate.

B. Members of the youth council who are not members of the local board shall be voting members of the youth council and nonvoting members of the local board.

C. The duties of the youth council shall include:

(1) developing the portions of the local plan relating to eligible youth, as determined by the chairman of the local board;

(2) recommending eligible youth providers to the local board;

(3) conducting oversight of eligible providers of youth activities and coordinating youth activities authorized pursuant to the federal Workforce Investment Act of 1998 subject to the approval of the local board; and

(4) performing other duties as determined to be appropriate by the chairman of the local board.

D. A member of a local board or youth council may not vote on a matter under consideration by the local board regarding the provision of services by the member or by an entity that the member represents or that would provide direct financial benefit to the member or the immediate family of the member engaged in any activity determined by the governor to constitute a conflict of interest as specified in the state plan prepared pursuant to the federal Workforce Investment Act of 1998.

Chapter 260 Section 7

Section 7. FUNDING--PERSONNEL.--

A. To carry out its functions, the board may use money available to the state pursuant to the federal Workforce Investment Act of 1998. The labor department shall be the fiscal agent for the board. The labor department may be the fiscal agent for a local board.

B. Staff support for the board shall be provided by each of the state agencies represented on the board.

Chapter 260 Section 8

Section 8. LEGISLATIVE POWERS.--Any money received by the state pursuant to the federal Workforce Investment Act of 1998 shall be subject to appropriation by the legislature consistent with the terms and conditions required by that act.

Chapter 260 Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.

HOUSE BILL 740, AS AMENDED

CHAPTER 261

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL RETIREMENT ACT TO INCREASE THE NUMBER OF INSTITUTIONS WHOSE EMPLOYEES MAY PARTICIPATE IN THE ALTERNATIVE RETIREMENT PLAN.

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

Chapter 261 Section 1

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

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

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

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution, except for:

(a) a participant; or

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

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board, except for a participant;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

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

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisional member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

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

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

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

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

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

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

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

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

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

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

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

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

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

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

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

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

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

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered; and

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

Chapter 261 Section 2

Section 2. Section 22-11-47 NMSA 1978 (being Laws 1991, Chapter 118, Section 5) is amended to read:

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

A. Beginning October 1, 1991, any employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. Beginning October 1, 1999, an employee of Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is eligible to become a participant may make an irrevocable election to participate in the alternative retirement plan within ninety days of the initial date. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 or October 1, 1999, whichever is applicable, or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member.

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

C. When an employee elects to become a participant, any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied instead toward the alternative retirement plan as if the participant had been participating

in the alternative retirement plan from the commencement of employment with the qualifying state educational institution."

Chapter 261 Section 3

Section 3. Section 22-11-49 NMSA 1978 (being Laws 1991, Chapter 118, Section 7) is amended to read:

"22-11-49. ALTERNATIVE RETIREMENT PLAN--CONTRIBUTIONS.--

A. Each participant shall contribute an amount equal to the percent of the participant's salary that the participant would have been required to contribute as a regular member. The contribution shall be made in the manner provided for by the board.

B. Each qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would have been required of the employer if the participant was, instead, a regular member. Of the contribution made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, or October 1, 1999, whichever is applicable, a sum equal to three percent of the annual salary of each participant shall be contributed to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board; provided, however, that on July 1 following any report by the actuary to the board that concludes that less than three percent of the contributions made by a qualifying state educational institution on behalf of its participants is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, the three percent shall be reduced to the percentage determined by the actuary.

C. Contributions required by the provisions of this section may be made by a reduction in salary or by a public employer pick-up pursuant to any applicable provision of the Internal Revenue Code of 1986, as amended."

Chapter 261 Section 4

Section 4. Section 22-11-51 NMSA 1978 (being Laws 1991, Chapter 118, Section 9) is amended to read:

"22-11-51. BENEFITS.--No retirement, death or other benefit shall be paid by the board from the fund for services credited under the alternative retirement plan. Such benefits are payable to participants or their beneficiaries only by the appropriate alternative retirement plan contractor or carrier in accordance with the terms of the applicable contracts or certificates provided, however, that retirement benefits shall be paid in the form of a lifetime income and, except for death benefits, single sum cash payments shall not be permitted.

HOUSE BILL 168, AS AMENDED

CHAPTER 262

RELATING TO HUMAN RIGHTS; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR PUBLIC ACCESS FOR ASSISTANCE ANIMALS AND THEIR TRAINERS.

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

Chapter 262 Section 1

Section 1. Section 28-11-2 NMSA 1978 (being Laws 1989, Chapter 242, Section 1) is amended to read:

"28-11-2. DEFINITIONS.--As used in Section 28-11-3 NMSA 1978, "qualified assistance animal" means:

A. a dog trained or being trained by a recognized school for training dogs to assist persons with disabilities;

B. an animal recognized as a service animal pursuant to the Americans with Disabilities Act of 1990; or

C. any other animal approved by the governor's committee on concerns of the handicapped as acceptable in public places and trained to provide some special assistance to a person with a disability."

Chapter 262 Section 2

Section 2. Section 28-11-3 NMSA 1978 (being Laws 1989, Chapter 242, Section 2) is amended to read:

"28-11-3. ADMITTANCE OF QUALIFIED ASSISTANCE ANIMALS.--Notwithstanding any other provision of law, a qualified assistance animal shall be admitted to any building open to the public and to all public accommodations such as restaurants, hotels, hospitals, swimming pools, stores, common carriers and theaters; provided that the qualified assistance animal is under the control of a person with a disability or a trainer of assistance animals. No person shall be required to pay any additional charges for his qualified assistance animal, but shall be liable for any damage done by his qualified assistance animal."

HOUSE BILL 364

CHAPTER 263

RELATING TO ARCHITECTURAL SERVICES; PROVIDING FOR TELECONFERENCE BOARD MEETINGS; CLARIFYING REGISTRATION REQUIREMENTS; EXPANDING THE GROUNDS FOR DISCIPLINARY ACTIONS; EXTENDING THE LIFE OF THE BOARD OF EXAMINERS FOR ARCHITECTS; AMENDING SECTIONS OF THE ARCHITECTURAL ACT.

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

Chapter 263 Section 1

Section 1. Section 61-15-2 NMSA 1978 (being Laws 1979, Chapter 362, Section 2, as amended) is amended to read:

"61-15-2. DEFINITIONS.--As used in the Architectural Act:

A. "architect" means any individual registered under the Architectural Act to practice architecture;

B. "architectural services" means the services, as defined by rule of the board, performed in the practice of architecture. These services include predesign services, programming and planning, providing designs, drawings, specifications, other technical submissions, administration of construction contracts, coordination of technical submissions prepared by others and such other professional services as may be necessary to the planning, progress and completion of any architectural services. An architect who has complied with all of the laws of New Mexico relating to the practice of architecture has a right to engage in the incidental practice of activities properly classifiable as engineering; provided that the architect does not hold himself out to be an engineer or as performing engineering services and further provided that the architect performs only that part of the work for which the architect is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an architect's professional seal;

C. "board" means the board of examiners for architects;

D. "construction administration", when performed by an architect, means the interpretation of the drawings and specifications, the establishment of standards of acceptable workmanship and the observation of construction to determine its consistency with the general intent of the construction documents. Inspection of buildings by contractors, subcontractors or building inspectors or their agents shall not constitute construction administration;

E. "incidental practice" means the performance of other professional services that are related to an architect's performance of architectural services;

F. "intern architect" means a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board;

G. "practice of architecture" means rendering or offering to render architectural services in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within the site surrounding those buildings, which have as their principal purpose human occupancy or habitation. "Practice of architecture" does not include the practice of engineering as defined in the Engineering and Surveying Practice Act but may include such engineering work as is incidental practice;

H. "project" means the building or group of buildings and the space within the site surrounding the buildings as defined by the construction documents; and

I. "responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto."

Chapter 263 Section 2

Section 2. Section 61-15-4 NMSA 1978 (being Laws 1931, Chapter 155, Section 3, as amended) is amended to read:

"61-15-4. POWERS AND DUTIES OF THE BOARD.--

A. The board shall hold at least four regular meetings each year. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. A majority of the board members constitutes a quorum.

B. A board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person if:

(1) each member participating by conference telephone can be identified when speaking;

(2) all participants are able to hear each other at the same time; and

(3) members of the public attending the meeting are able to hear all board members who speak during the hearing.

C. The board may establish committees to carry out the provisions of the Architectural Act. The board or any committee thereof shall have the power to subpoena any witness, to administer oaths and to take testimony concerning matters within its jurisdiction. It is within the jurisdiction of the board to determine and prescribe by regulations the professional and technical qualifications necessary for the practice of architecture in

New Mexico. The board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted, and may make rules not inconsistent with law.

D. The board may offer, engage in and promote educational and other activities as it deems necessary to fulfill its duty to promote the public welfare.

E. The board may, for the purpose of protecting the citizens of New Mexico and promoting current architectural knowledge and practice, adopt rules establishing continuing education requirements as a condition of registration renewal.

F. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized reimbursement and necessary expenses incident to cooperation with like boards of other states, shall be paid by the state treasurer out of the "fund of the board of examiners for architects" on the warrant of the secretary of finance and administration issued upon vouchers signed by the chair or the chair's designee; provided, however, that at no time shall the total warrants issued exceed the total amount of funds accumulated under the Architectural Act. All money derived from the operation of the Architectural Act shall be deposited with the state treasurer, who shall keep the money in the fund of the board of examiners for architects.

G. The board shall by rule provide for the examinations required for registration. The board shall keep a complete record of all examinations.

H. Upon application for registration, upon a prescribed form and upon payment by the applicant of a fee set by the board, the board shall consider the application and, in cases as herein authorized, shall issue a certificate of registration as an architect to any person who submits evidence satisfactory to the board that the person is fully qualified to practice architecture.

I. It is the duty of the board to report to the district attorney of the district where the offense was committed any criminal violation of the Architectural Act.

J. The board may deny, review, suspend or revoke a registration to practice architecture and may censure, fine, reprimand and place on probation and stipulation any architect in accordance with the Uniform Licensing Act for any cause as stated in the Architectural Act.

K. The board, in cooperation with the state board of registration for professional engineers and land surveyors and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote public welfare, the purpose of the committee is to promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The

composition of the committee and its duties and powers shall be in accordance with identical resolutions adopted by each board."

Chapter 263 Section 3

Section 3. Section 61-15-5 NMSA 1978 (being Laws 1931, Chapter 155, Section 4, as amended) is amended to read:

"61-15-5. ADDITIONAL DUTIES OF THE BOARD.--

A. The board shall keep a record of its proceedings. The records of the board shall be prima facie evidence of the proceedings of the board set forth in the record and a transcript of the record, duly certified by the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

B. The board shall keep a register of all applications for registration, which shall show the name, age and residence of each applicant, the date of application, the applicant's place of business, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of registration was granted, the date of the action of the board and any other information deemed necessary by the board.

C. Annually, the board shall submit to the governor a report of its transactions of the preceding year accompanied by a complete statement of the receipts and expenditures of the board. The report shall be available to the public.

D. Board records and papers which are of a confidential nature and are not public records include examination material for examinations not yet given, file records of examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants and investigation files. All data, communications and information acquired by the board relating to actual or potential disciplinary action is confidential and shall not be disclosed.

E. A roster showing the names and addresses of all registered architects shall be prepared annually by the board and shall be made available to each registered architect and placed on file with the secretary of state. Copies of the roster may be distributed or sold to the public.

F. The board shall, by rule, set application, registration, renewal, examination and other fees.

G. The board may, by rule, set criteria for the training of intern architects."

Chapter 263 Section 4

Section 4. Section 61-15-6 NMSA 1978 (being Laws 1931, Chapter 155, Section 5, as amended) is amended to read:

"61-15-6. REQUIREMENTS FOR REGISTRATION.--

A. To be eligible for registration, a person shall be of good character and repute.

B. An applicant for registration shall submit evidence satisfactory to the board that the applicant is fully qualified to practice architecture in New Mexico.

C. All applicants for registration shall be required to pass any examinations required by the board.

D. All applicants for registration shall be required to complete all forms and affidavits required by the board.

E. An applicant for registration by examination shall have:

(1) a professional degree from an architectural program accredited by the national architectural accreditation board or its equivalent as prescribed by rule;

(2) certified completion of the intern training program of the national council of architectural registration boards; and

(3) passed all divisions of the architectural registration examination.

F. A person registered as an architect in another jurisdiction who has been certified by the national council of architectural registration boards may apply for registration without an examination by presenting:

(1) a certificate of good standing issued by the national council of architectural registration boards or its equivalent as prescribed by rule; and

(2) evidence satisfactory to the board of qualification in design for seismic forces.

G. A person registered as an architect in another jurisdiction who has held the registration in a position of responsibility for at least five years and who does not have a certificate issued by the national council of architectural registration boards may apply for registration by presenting evidence of broad experience as an architect, as required by rule of the board, of academic training and work experience directly related to architecture.

H. No sole proprietorship, partnership, corporation, association or other business entity shall be registered under the Architectural Act. No sole proprietorship, partnership, corporation, association or other business entity shall practice or offer to practice architecture in the state except as provided in Subsections I, J and K of this section.

I. Registered architects may practice under the Architectural Act as individuals or through partnerships, associations, corporations or other business entities.

J. In the case of practice through a partnership offering architectural services, at least one of the partners shall be a registered architect under the Architectural Act, and all plans, designs, drawings, specifications or reports issued by or for the partnership shall bear the seal of a registered architect who shall be responsible for such work.

K. In the case of practice through a business entity, services or work involving the practice of architecture may be offered through the business entity; provided the registered architect in responsible charge of the activities of the business entity involved in such practice is an employee of the business entity with the authority to bind the entity by contract. All plans, designs, drawings, specifications or reports that are involved in the practice and issued by or for the business entity shall bear the seal and signature of a registered architect in responsible charge of the work when issued. The architect in responsible charge of activities of the business entity offering architectural services shall provide the board with an affidavit documenting the authority and shall notify the board of a termination of the authority."

Chapter 263 Section 5

Section 5. Section 61-15-7 NMSA 1978 (being Laws 1931, Chapter 155, Section 6, as amended) is amended to read:

"61-15-7. CERTIFICATES OF REGISTRATION.--

A. The board shall issue a certificate of registration to each architect. An architect may, upon registration, obtain the seal of the design authorized by the board, which bears the registrant's name and the legend "Registered Architect--State of New Mexico". All plans, specifications, plats and reports prepared by an architect or under an architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by an architect or under an architect's responsible charge on work described in Subsection B of Section 61-15-9 NMSA 1978.

B. Certificates of registration shall be valid for a period of time as set by rule and shall be invalid after the date of expiration unless renewed.

C. Renewal may be effected at any time prior to expiration by the payment of a fee in an amount set by the board. Fees shall be paid to the board.

D. The failure on the part of any registrant to renew a certificate prior to expiration shall not deprive that person of the right of renewal within three years of the expiration date of the certificate. Reinstatement of the certificate may be effected in a manner prescribed by rule and may include penalties and fees.

E. Renewal of a certificate that has been expired for more than three years shall require a demonstration of continued proficiency and qualification to practice architecture in addition to payment of penalties and fees and such other requirements as may be required by rule."

Chapter 263 Section 6

Section 6. Section 61-15-8 NMSA 1978 (being Laws 1931, Chapter 155, Section 7, as amended) is amended to read:

"61-15-8. EXEMPTIONS FROM REGISTRATION.--

A. The following are exempt from the provisions of the Architectural Act:

(1) architects who have no established places of business in this state and who are not registered under the Architectural Act may act as consulting associates of an architect registered under the provisions of the Architectural Act, provided the architects are registered as architects in another jurisdiction; and

(2) architects acting solely as officers or employees of the United States or any interstate railroad system.

B. Nothing in the Architectural Act shall prevent a registered architect from employing non-registrants to work under the architect's responsible charge."

Chapter 263 Section 7

Section 7. Section 61-15-9 NMSA 1978 (being Laws 1931, Chapter 155, Section 8, as amended) is amended to read:

"61-15-9. PROJECT EXEMPTIONS.--

A. The state and its political subdivisions are not exempt from the requirements of the Architectural Act.

B.A person who is not an architect may prepare building plans and specifications unless the building plans and specifications involve public safety or health, but the work shall be done only on:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided, this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height which are appurtenant to buildings described in Paragraphs (1) and (2) of this subsection; or

(4) nonresidential buildings, as defined in the uniform building code, unless the building code official having jurisdiction has found that the submission of plans, drawings, specifications or calculations prepared and designed by an architect or engineer licensed by the state is necessary to obtain compliance with minimum standards governing the preparation of building plans and specifications adopted by the construction industries division of the regulation and licensing department. The construction industries division shall set, by regulation, minimum standards for preparation of building plans and specifications pursuant to this paragraph.

C. Nothing in the Architectural Act shall require the state or any political subdivision of the state to secure the services of an architect or engineer for any public work project which consists of repair, replacement or remodeling if the alteration does not affect structural or life safety features of a building and does not require the issuance of a building permit under any applicable code.

D. A New Mexico registered professional engineer who has complied with all the laws of New Mexico relating to the practice of engineering has a right to engage in the incidental practice, as defined by rule, of activities properly classified as architectural services; provided that the engineer does not hold himself out to be an architect or as performing architectural services; and further provided that the engineer performs only that part of the work for which the engineer is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting professional engineer is not qualified. The engineer shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an engineer's professional seal."

Chapter 263 Section 8

Section 8. Section 61-15-10 NMSA 1978 (being Laws 1979, Chapter 362, Section 8, as amended) is amended to read:

"61-15-10. VIOLATIONS--PENALTIES.--

A. Any person who knowingly uses a forged architectural registration seal on any document for the purposes of permitting the constructing of any building for human habitation or occupancy is guilty of a fourth degree felony, punishable pursuant to Section 31-18-15 NMSA 1978.

B. Each of the following acts committed by any person constitutes a misdemeanor, punishable pursuant to Section 31-19-1 NMSA 1978.

(1) willfully forging or giving false evidence of any kind to the board or any board member for the purpose of obtaining a certificate of registration as an architect;

(2) using or attempting to use an expired, suspended or revoked certificate of registration as an architect;

(3) using or permitting another to use his official architect's seal to stamp or seal any documents that have not been prepared either by the architect or the architect's responsible charge;

(4) engaging or offering to engage in the practice of architecture, unless exempted or duly registered to do so under the Architectural Act;

(5) using any designation tending to imply to the public that the person is an architect unless:

(a) the person is duly registered to do so under the provisions of the Architectural Act;

(b) the title containing the designation is allowed by rule of the board; or

(c) the title containing the designation does not imply that the person using the designation, when describing occupation, business name or services, is offering to perform architectural services; or

(6) procuring, aiding or abetting any violation of the provisions of the Architectural Act or the rules adopted by the board."

Chapter 263 Section 9

Section 9. Section 61-15-12 NMSA 1978 (being Laws 1979, Chapter 362, Section 9, as amended) is amended to read:

"61-15-12. DISCIPLINARY ACTIONS.--

A. In accordance with the provisions of the Uniform Licensing Act, the board may refuse to issue, may suspend or may revoke any certificate of registration as an architect, and the board may impose disciplinary conditions, including a letter of censure or reprimand, an administrative penalty, probation, peer review, remedial education and testing and other conditions as deemed necessary by the board to promote the public welfare, upon satisfactory proof being made to the board that the registrant has:

(1) engaged in any fraud or deceit in obtaining a certificate of registration;

(2) made a false statement under oath or a false affidavit to the board;

(3) engaged in gross negligence, incompetency or misconduct in the practice of architecture as set forth by rule;

(4) stamped with his official seal any plans, specifications, plats or reports in violation of the Architectural Act;

(5) practiced architecture without a valid and current registration in the jurisdiction in which the practice took place;

(6) represented himself to be an architect without having a valid and current certificate of registration as an architect in the jurisdiction in which the representation took place;

(7) violated any provisions of the Architectural Act or the rules adopted by the board;

(8) refused to accept or to respond to a certified mail communication from the board;

(9) failed to provide the board or its representatives in a timely manner all documentation or information in the registrant's possession or knowledge that has been requested by the board for the purposes of investigation of an alleged violation of the Architectural Act or the rules adopted by the board;

(10) procured, aided or abetted a violation of the Architectural Act or the rules adopted by the board;

(11) failed to comply with the minimum standards of the practice of architecture;

(12) habitually or excessively used intoxicants or controlled substances; or

(13) failed to report to the board any adverse actions taken against the registrant by another jurisdiction, any professional organization, any governmental or law enforcement agency or any court for an act or conduct that would constitute grounds for actions as provided by this section.

B. The board may deny access to examination, may refuse to issue, may suspend or may revoke any certificate of registration as an architect:

(1) for any applicant found to have violated any provision of the Architectural Act or the rules adopted by the board; or

(2) for any registrant or applicant who is convicted of a felony.

C. Disciplinary proceedings may be instituted by any person, shall be instituted by sworn complaint and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of the costs for the copy.

D. The board may modify any prior order of revocation, suspension or refusal to issue a certificate of registration of an architect, but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided, however, that any

cessation of the practice of architecture for twelve months or more shall require the architect to undergo such additional examination as the board determines necessary.

E. Nothing in the Architectural Act shall be construed as requiring the board to report, for the institution of proceedings, minor violations of that act provided that the board, after an informal hearing, determines that the public interest will be adequately served by a suitable written notice or warning or by the suspension of the offender's license or certificate of registration for a period not to exceed thirty days.

F. The applicant or registrant shall be liable for all costs of disciplinary proceedings unless exonerated and shall be liable for all costs associated with monitoring compliance with any disciplinary action."

Chapter 263 Section 10

Section 10. 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, 2005 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, 2006. Effective July 1, 2006, the Architectural Act is repealed."

HOUSE BILL 478, AS AMENDED

CHAPTER 264

MAKING AN APPROPRIATION TO THE SPACE COMMERCIALIZATION DIVISION OF THE ECONOMIC DEVELOPMENT DEPARTMENT TO CONDUCT ENVIRONMENTAL IMPACT STUDIES, OBTAIN WATER RESOURCES AND DEVELOP A PROPOSAL IN RESPONSE TO LOCKHEED MARTIN'S SITE SELECTION PROCESS; DECLARING AN EMERGENCY.

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

Chapter 264 Section 1

Section 1. APPROPRIATION.--One million eight hundred ten thousand dollars ($1,810,000) is appropriated from the general fund operating reserve to the space commercialization division of the economic development department for expenditure in fiscal years 1999, 2000 and 2001 for the purpose of developing the southwest regional spaceport to conduct environmental impact studies, obtain water resources and develop a proposal in response to Lockheed Martin's site selection process. Expenditure of these funds shall be contingent upon the state receiving a written commitment from

Lockheed Martin that New Mexico is one of three finalists in the competition for site selection. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall remain in the general fund operating reserve.

Chapter 264 Section 2

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

HOUSE BILL 551, AS AMENDED

SIGNED April 8, 1999

CHAPTER 265

RELATING TO JUDICIAL REVIEW; REVISING PROCEDURES FOR JUDICIAL REVIEW OF FINAL DECISIONS BY AGENCIES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 265 Section 1

Section 1. Section 39-3-1.1 NMSA 1978 (being Laws 1998, Chapter 55, Section 1) is amended to read:

"39-3-1.1. APPEAL OF FINAL DECISIONS BY AGENCIES TO DISTRICT COURT--APPLICATION--SCOPE OF REVIEW--REVIEW OF DISTRICT COURT DECISIONS.--

A. The provisions of this section shall apply only to judicial review of agency final decisions that are placed under the authority of this section by specific statutory reference.

B. Upon issuing a final decision, an agency shall promptly:

(1) prepare a written decision that includes an order granting or denying relief and a statement of the factual and legal basis for the order;

(2) file the written decision with the official public records of the agency; and

(3) serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on:

(a) all persons who were parties in the proceeding before the agency; and

(b) every person who has filed a written request for notice of the final decision in that particular proceeding.

C. Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision. The appeal may be taken to the district court for the county in which the agency maintains its principal office or the district court of any county in which a hearing on the matter was conducted. When notices of appeal from a final decision are filed in more than one district court, all appeals not filed in the district court in which the first appeal was properly filed shall be dismissed without prejudice. An appellant whose appeal was dismissed without prejudice pursuant to the provisions of this subsection shall have fifteen days after receiving service of the notice of dismissal to file a notice of appeal in the district court in which the first appeal was properly filed.

D. In a proceeding for judicial review of a final decision by an agency, the district court may set aside, reverse or remand the final decision if it determines that:

(1) the agency acted fraudulently, arbitrarily or capriciously;

(2) the final decision was not supported by substantial evidence; or

(3) the agency did not act in accordance with law.

E. A party to the appeal to district court may seek review of the district court decision by filing a petition for writ of certiorari with the court of appeals, which may exercise its discretion whether to grant review. A party may seek further review by filing a petition for writ of certiorari with the supreme court.

F. The district court may certify to the court of appeals a final decision appealed to the district court, but undecided by that court, if the appeal involves an issue of substantial public interest that should be decided by the court of appeals. The appeal shall then be decided by the court of appeals.

G. The procedures governing appeals and petitions for writ of certiorari that may be filed pursuant to the provisions of this section shall be set forth in rules adopted by the supreme court.

H. As used in this section:

(1) "agency" means any state or local public body or officer placed under the authority of this section by specific statutory reference;

(2) "final decision" means an agency ruling that as a practical matter resolves all issues arising from a dispute within the jurisdiction of the agency, once all administrative remedies available within the agency have been exhausted. The determination of

whether there is a final decision by an agency shall be governed by the law regarding the finality of decisions by district courts. "Final decision" does not mean a decision by an agency on a rule, as defined in the State Rules Act; and

(3) "hearing on the matter" means a formal proceeding conducted by an agency or its hearing officer for the purpose of taking evidence or hearing argument concerning the dispute resolved by the final decision."

Chapter 265 Section 2

Section 2. Section 1-4-21 NMSA 1978 (being Laws 1969, Chapter 240, Section 77, as amended) is amended to read:

"1-4-21. REFUSAL OF REGISTRATION--APPEAL.--A qualified elector whose registration has been refused or the county chairman of any major political party who alleges that certain persons are qualified electors but have been refused registration may bring an appeal regarding the refused registration pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 3

Section 3. Section 3-2-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-2-4, as amended) is amended to read:

"3-2-5. INCORPORATION--DUTIES OF COUNTY COMMISSIONERS AFTER FILING OF PETITION TO ACT--CENSUS REQUIRED--ELECTION--RIGHT OF APPEAL TO DISTRICT COURT.--

A. After the petition for incorporation, together with the accompanying map or plat, and the amount of money sufficient to pay the cost of a census have been filed with the board of county commissioners, the board of county commissioners shall, in lieu of complying with the requirements of Section 3-1-5 NMSA 1978, within thirty days after the filing of the petition, determine:

(1) from the voter registration list in the office of the county clerk if the signers of the petition are qualified electors residing in the territory proposed to be incorporated; or

(2) from the tax schedules of the county if any of the owners of the real estate who signed the petition are delinquent in the payment of property taxes; and

(3) if the territory proposed to be incorporated is within an existing municipality or within the urbanized area of a municipality.

B. If the board of county commissioners determines that the territory proposed to be incorporated is:

(1) not within the boundary of an existing municipality and not within the urbanized area of a municipality; or

(2) within the urbanized area of another municipality and in compliance with Section 3-2-3 NMSA 1978, the board of county commissioners shall cause a census to be taken of the persons residing within the territory proposed to be incorporated. The census shall be completed and filed with the board of county commissioners within thirty days after the board of county commissioners authorizes the taking of the census.

C. Within fifteen days after the date the results of the census have been filed with the board of county commissioners, the board of county commissioners shall determine if the conditions for incorporation of the territory as a municipality have been met as required in Sections 3-2-1 through 3-2-3 NMSA 1978 and shall have its determination recorded in the minutes of its meeting.

D. If the board of county commissioners determines that the conditions for incorporation have not been met, the board of county commissioners shall notify the petitioners of its determination by publishing in a newspaper of general circulation in the territory proposed to be incorporated, once, not more than ten days after its determination, a notice of its determination that the conditions for incorporation have not been met. If there is no newspaper of general circulation in the territory proposed to be incorporated, notice of the determination shall be posted in eight public places within the territory proposed to be incorporated.

E. After the board of county commissioners has determined that all of the conditions for incorporation of the territory as a municipality have been met, the board of county commissioners shall hold an election on the question of incorporating the territory as a municipality. Elections for the incorporation of municipalities shall only be held in odd-numbered years upon the first Tuesday in July or in any year upon the first Tuesday in January, unless that Tuesday is a holiday, in which case the election shall be held on the second Tuesday in July or the second Tuesday in January. The county clerk shall notify the secretary of finance and administration and the secretary of taxation and revenue of the date of the incorporation election within ten days after the adoption of the resolution calling the election.

F. The signers of the petition or a municipality within whose urbanized area the territory proposed to be incorporated is located may appeal any determination of the board of county commissioners to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 4

Section 4. Section 3-2-9 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-2-8, as amended) is amended to read:

"3-2-9. INCORPORATION COMPLETE--JUDICIAL NOTICE--DEFECTS IN INCORPORATION--APPEAL.--

A. After certified copies of the papers relating to the incorporation of a municipality have been filed in the offices of the county clerk and the secretary of state and after the municipal officers have been elected and qualified, the incorporation of the municipality shall be complete and effective on the following January 1 if the election was held in July or on the following July 1 if the election was held in January, and notice of the incorporation shall be taken in all judicial proceedings.

B. An action by a protestant against the incorporation of a municipality shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 5

Section 5. Section 3-19-8 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-18-8, as amended) is amended to read:

"3-19-8. APPEAL.--Any person in interest dissatisfied with an order or determination of the planning commission, after review of the order or determination by the governing body of the municipality, may commence an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 6

Section 6. Section 3-21-4 NMSA 1978 (being Laws 1977, Chapter 80, Section 3, as amended) is amended to read:

"3-21-4. EXTRATERRITORIAL ZONING ORDINANCE--ENFORCEMENT AND ADMINISTRATION--APPEALS.--

A. A zoning ordinance adopted by a joint municipal-county zoning authority shall be an ordinance of the municipality and an ordinance of the county joining in the agreement pursuant to Subsection A of Section 3-21-3 NMSA 1978 and may be enforced by appropriate procedures of either the municipality or the county. The agreement entered into pursuant to Subsection A of Section 3-21-3 NMSA 1978 may specify whether the municipality or the county shall assume primary enforcement responsibility.

B. The extraterritorial zoning commission shall administer the zoning ordinance adopted by the joint municipal-county zoning authority in the manner provided in Subsection C of Section 3-21-7 NMSA 1978.

C. Appeals from the decisions of the extraterritorial zoning commission shall be taken to the joint municipal-county zoning authority in the manner provided in Section 3-21-8 NMSA 1978, and appeals from the decisions of the joint municipal-county zoning

authority shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 7

Section 7. Section 3-21-9 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-7, as amended) is amended to read:

"3-21-9. ZONING--APPEAL.--A person aggrieved by a decision of the zoning authority or any officer, department, board or bureau of the zoning authority may appeal the decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 8

Section 8. Section 3-33-13 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-6, as amended) is amended to read:

"3-33-13. IMPROVEMENT DISTRICT--PROVISIONAL ORDER--PROTEST--APPEAL TO DISTRICT COURT.--

A. At the hearing of the governing body on the provisional order creating an improvement district, an interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

(1) propriety and advisability of constructing the improvement;

(2) estimated cost of the improvement;

(3) manner of paying for the improvement; or

(4) estimated maximum benefit to each individual tract or parcel of land.

B. The governing body may recess the hearing from time to time so that all protestants may be heard.

C. Within thirty days after the governing body has, by adoption of a resolution:

(1) concluded the hearing;

(2) determined:

(a) the advisability of constructing the improvement; and

(b) the type and character of the improvement; and

(3) created the improvement district, a person who during the hearing filed a written protest with the governing body protesting the construction of the improvement may appeal the determination of the governing body pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. Where no person has filed a written protest during the hearing and all owners of property to be assessed, upon conclusion of the hearing, submit to the governing body written statements in favor of the creation of the improvement district for the types and character of improvements indicated in the provisional order, those owners shall be deemed to have waived their right to bring any action challenging the validity of the proceedings or the amount of benefit to be derived from the improvements."

Chapter 265 Section 9

Section 9. Section 3-33-16 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-9, as amended) is amended to read:

"3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--PROTEST--ACTION OF THE GOVERNING BODY--APPEAL TO DISTRICT COURT.--

A. At the preliminary hearing of the governing body on the question of creating an improvement district as authorized in Section 3-33-14 NMSA 1978, an owner of a tract or parcel of land to be assessed may contest:

(1) the proposed assessment;

(2) the regularity of the proceedings relating to the improvement;

(3) the benefits of the improvement; or

(4) any other matter relating to the improvement district.

B. The governing body shall not assess the tract or parcel of land an amount greater than the actual benefit to the tract or parcel of land by reason of the enhanced value of the tract or parcel of land as a result of the improvement as ascertained at the hearing. The governing body may allow a fair price, based on its current value, as a set-off against any assessment against a tract or parcel of land if the owner has improved the tract or parcel of land in such a manner that the improvement may be made part of the proposed improvement.

C. At the hearing, the governing body may:

(1) correct a mistake or irregularity in any proceeding relating to the improvement;

(2) correct an assessment made against any tract or parcel of land;

(3) in case of any invalidity, reassess the cost of the improvement against a benefitting tract or parcel of land; or

(4) recess the hearing.

D. An owner of a tract or parcel of land assessed, whether he appeared at the hearing or not, may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 10

Section 10. Section 3-33-22 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-15, as amended) is amended to read:

"3-33-22. IMPROVEMENT DISTRICT--FILING OF OBJECTIONS--

ASSESSMENT HEARING--ACTION OF THE GOVERNING BODY--APPEAL TO DISTRICT COURT.--

A. Not later than three days before the date of the hearing on the assessment roll, an owner of a tract or parcel of land that is listed on the assessment roll may file his specific objections in writing with the municipal clerk. Unless presented as required in this section, an objection to the regularity, validity and correctness of:

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land, is deemed waived.

B. At the hearing, the governing body shall hear all objections that have been filed as provided in this section and may recess the hearing and, by resolution, revise, correct, confirm or set aside an assessment and order another assessment be made de novo.

C. The governing body by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 3-33-11 NMSA 1978. The decision, resolution and ordinance of the governing body is:

(1) a final determination of the regularity, validity and correctness of:

(a) the proceedings;

(b) the assessment roll;

(c) each assessment contained on the assessment roll; and

(d) the amount of the assessment levied against each tract or parcel of land; and

(2) conclusive upon the owners of the tract or parcel of land assessed.

D. An owner who has filed an objection as provided in this section may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 11

Section 11. Section 3-33-35 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-32-30, as amended) is amended to read:

"3-33-35. IMPROVEMENT DISTRICT--NOTICE OF APPEAL--APPEAL TO DISTRICT COURT.--After an owner has filed a written objection with the municipal clerk to a reassessment as provided in Section 3-33-22 NMSA 1978 and the governing body has determined the reassessment, an owner of a tract or parcel of land that is reassessed may file a notice of appeal to the district court. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 12

Section 12. Section 3-35-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-34-3, as amended) is amended to read:

"3-35-3. HEARING ON PROVISIONAL ORDER--PROTEST BY PROPERTY OWNER OR INTERESTED PERSON--APPEAL.--At the hearing on a provisional order, a property owner or interested person may file a written protest and may be heard by the governing body on the order. A person filing a written protest may bring an appeal concerning the governing body's determination on the protest pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 13

Section 13. Section 3-39-23 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-21, as amended) is amended to read:

"3-39-23. JUDICIAL REVIEW.--

A. Any person aggrieved by a decision of the board of appeals, any taxpayer or any officer, department, board or bureau of the political subdivision may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from."

Chapter 265 Section 14

Section 14. Section 3-46-43 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-47-19, as amended) is amended to read:

"3-46-43. ORDINANCES RELATING TO REPAIR, CLOSING AND DEMOLITION OF DWELLINGS UNFIT FOR HUMAN HABITATION--COMPLAINT--SERVICE OF COMPLAINT--APPEAL.--

A. Whenever any municipality finds that there exist dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities or due to other conditions, including those set forth in Subsection C of this section, rendering the dwellings unsafe and unsanitary or dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of the municipality, power is conferred upon the municipality to require or cause the repair, closing or demolition or removal of the dwelling in the manner provided in this section. A "dwelling" means any building or structure or part thereof used and occupied for human habitation or intended to be so used and includes any appurtenances usually enjoyed in the dwelling.

B. Upon the adoption of an ordinance finding that dwelling conditions of the character described in Subsection A of this section exist, the governing body of the municipality is authorized to adopt ordinances relating to the dwellings within the municipality that are unfit for human habitation. The ordinances shall include the following provisions:

(1) a public officer shall be designated or appointed to exercise the powers prescribed by the ordinances;

(2) whenever it appears to the public officer, on his own motion, that any dwelling is unfit for human habitation, he shall, if his preliminary investigation discloses a basis for the charges, issue and cause to be served on the owner, every mortgagee of record and all parties in interest in the dwelling, including persons in possession, a complaint stating the charges in that respect. The complaint shall contain a notice that a hearing will be held before the public officer or his designated agent at a place fixed in the complaint not less than ten days nor more than thirty days after the serving of the complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and the time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

(3) if after the notice and hearing the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in

support of that determination and shall issue and cause to be served upon the owner an order in writing that advises the owner of his rights under Subsection E of this section and that:

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose and require the owner, within the time specified in the order, to repair, alter or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for the purpose, and require the owner, within the time specified in the order, to remove or demolish the dwelling;

(4) if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed;

(5) if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause the dwelling to be removed or demolished; and

(6) the amount of the cost of the repairs, alterations or improvements or the vacating and closing or the removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining shall be deposited in the district court by the public officer and shall be secured in the manner as may be directed by the court and shall be disbursed by the court to the persons found to be entitled to the balance by final order or decree of the court.

C. An ordinance adopted by a municipality pursuant to this section shall provide that the public officer may determine a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that are dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings or other residents of the municipality or that have a blighting influence on properties in the area. The conditions may include the following, without limitations: defects increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements. The ordinance may provide

additional standards to guide the public officer or his agents or employees in determining the fitness of a dwelling for human habitation.

D. Complaints or orders issued by a public officer pursuant to an ordinance adopted under the provisions of the Urban Development Law shall be served upon persons either personally or by registered mail. If the whereabouts of the persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality or, in the absence of a newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the clerk of the county in which the dwelling is located. Filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

E. Any person affected by an order issued by the public officer may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of the Urban Development Law, including the following powers in addition to others granted in the Urban Development Law:

(1) to investigate the dwelling conditions in the municipality in order to determine which dwellings are unfit for human habitation;

(2) to administer oaths and affirmations, examine witnesses and receive evidence;

(3) to enter upon premises for the purpose of making examinations, provided that the entries shall be made in a manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

(4) to appoint and fix the duties of any officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and

(5) to delegate any of his functions and powers under the ordinance to officers, agents and employees he may designate.

G. The governing body of a municipality adopting an ordinance under this section shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the municipality for the purpose of determining the

fitness of the dwellings for human habitation and for the enforcement and administration of its ordinance or ordinances adopted under this section.

H. Nothing in this section shall be construed to abrogate or impair the powers of the courts or of a department of a municipality to enforce any provisions of its charter or its ordinances or regulations or to prevent or punish violations thereof. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

I. Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise."

Chapter 265 Section 15

Section 15. Section 3-51-12 NMSA 1978 (being Laws 1971, Chapter 173, Section 7, as amended) is amended to read:

"3-51-12. FORMATION OF DISTRICT--PROVISIONAL ORDER HEARING--CONDUCT--APPEAL.--

A. The owner of any property within the proposed district may, not less than two days preceding the hearing, file with the clerk his specific objections in writing. Any objection to the regularity, validity and correctness of the proceedings, including the validity and amount of the preliminary fund assessment, shall be deemed waived unless presented at the time and in the manner specified in this subsection.

B. At the time and place designated for hearing the objections, the governing body of the city shall hear and determine all objections that have been filed. The governing body shall have the power to adjourn the hearing and shall have power by resolution, in its discretion, to revise, correct or confirm any proceedings previously taken.

C. Within fifteen days after the publication of the ordinance forming the parking district, a person who has filed an objection, as provided in Subsection A of this section, shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 16

Section 16. Section 4-45-5 NMSA 1978 (being Laws 1876, Chapter 1, Section 22, as amended) is amended to read:

"4-45-5. ACCOUNTS AGAINST COUNTY--APPEAL FROM DISALLOWANCE.--When a claim of a person against a county is disapproved in whole or in part by the board of county commissioners, that person may appeal the decision of the board to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 17

Section 17. Section 4-55A-31 NMSA 1978 (being Laws 1980, Chapter 91, Section 31, as amended) is amended to read:

"4-55A-31. IMPROVEMENT DISTRICT--APPEAL TO DISTRICT COURT.--After an owner has filed a written objection with the county clerk to any reassessment as provided in Section 4-55A-18 NMSA 1978 and the board has determined the reassessment, any owner of a tract or parcel of land that is reassessed may file a notice of appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 18

Section 18. Section 7-8A-16 NMSA 1978 (being Laws 1997, Chapter 25, Section 16, as amended) is amended to read:

"7-8A-16. APPEAL--ACTION TO ESTABLISH CLAIM.--

A. A person aggrieved by a decision of the administrator may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. A person whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the district court for the first judicial district, naming the administrator as a defendant.

C. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees."

Chapter 265 Section 19

Section 19. Section 7-38-28 NMSA 1978 (being Laws 1973, Chapter 258, Section 68, as amended) is amended to read:

"7-38-28. APPEALS FROM ORDERS OF THE DIRECTOR OR COUNTY VALUATION PROTESTS BOARDS.--

A. A property owner may appeal an order made by the director or a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The director shall notify the appropriate county assessor of the decision and order of the district court and shall direct the assessor to take appropriate action to comply with the decision and order."

Chapter 265 Section 20

Section 20. Section 10-7D-23 NMSA 1978 (being Laws 1992, Chapter 9, Section 23, as amended) is amended to read:

"10-7D-23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW.--

A. The board or a local board may request the district court to enforce an order issued pursuant to the Public Employee Bargaining Act, including those for appropriate temporary relief and restraining orders. The court shall consider the request for enforcement on the record made before the board or local board. It shall uphold the action of the board or local board and take appropriate action to enforce it unless it concludes that the order is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence on the record considered as a whole; or

(3) otherwise not in accordance with law.

B. A person or party, including a labor organization, affected by a final rule, order or decision of the board or a local board, may appeal to the district court for further relief pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 21

Section 21. Section 10-9-18 NMSA 1978 (being Laws 1980, Chapter 47, Section 2, as amended) is amended to read:

"10-9-18. APPEALS BY EMPLOYEES TO THE BOARD.--

A. An employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

B. An applicant denied permission to take an examination or who is disqualified may appeal to the board.

C. The technical rules of evidence shall not apply to appeals to the board.

D. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.

E. The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at any hearing held

pursuant to this section. The hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a decision, which shall include findings of fact and conclusions of law.

F. If the board finds that the action taken by the agency was without just cause, the board may modify the disciplinary action or order the agency to reinstate the appealing employee to his former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which he was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one who disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

G. A party aggrieved by the decision of the board made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 22

Section 22. Section 10-11-120 NMSA 1978 (being Laws 1987, Chapter 253, Section 120, as amended) is amended to read:

"10-11-120. DENIAL OF BENEFIT CLAIM--APPEALS.--

A. A benefit claimant shall be notified in writing of a denial of a claim for benefits within thirty days of the denial. The notification shall give the reason for the denial. A claimant may appeal the denial and request a hearing. The appeal shall be in writing filed with the association within ninety days of the denial. The appeal shall contain a statement of the claimant's reason for claiming the denial to be improper. The retirement board shall schedule a de novo hearing of the appeal before the retirement board or, at the discretion of the retirement board, a designated hearing officer or committee of the retirement board within sixty days of receipt of the appeal. A final decision on the matter being appealed shall be made by the retirement board.

B. Appeals from a final decision of the retirement board may be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 23

Section 23. Section 12-8-16 NMSA 1978 (being Laws 1969, Chapter 252, Section 16, as amended) is amended to read:

"12-8-16. PETITION FOR JUDICIAL REVIEW.--Any party who has exhausted all administrative remedies available within the agency and who is adversely affected by a

final order or decision in an adjudicatory proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 24

Section 24. Section 13-1-183 NMSA 1978 (being Laws 1984, Chapter 65, Section 156, as amended) is amended to read:

"13-1-183. JUDICIAL REVIEW.--All actions authorized by the Procurement Code for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 25

Section 25. Section 13-4-15 NMSA 1978 (being Laws 1963, Chapter 304, Section 5, as amended) is amended to read:

"13-4-15. APPEALS.--

A. Any interested person may appeal any determination, finding or action of the director of the labor and industrial division of the labor department made pursuant to the Public Works Minimum Wage Act to the labor and industrial commission sitting as the appeals board by filing notice of the appeal with the director within fifteen days after the determination has been issued or notice of the finding or action has been given as provided in the Public Works Minimum Wage Act.

B. The labor and industrial commission, sitting as the appeals board, shall adopt rules as it deems necessary for the prompt disposition of appeals. A copy of the rules shall be filed with the librarian of the supreme court law library.

C. The appeals board, within ten days after the filing of the appeal, shall set the matter for an oral hearing within thirty days and, following the hearing, shall enter a decision within ten days after the close of the hearing and promptly mail copies of the decision to the parties.

D. Decisions of the appeals board may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 26

Section 26. Section 17-2-43.1 NMSA 1978 (being Laws 1995, Chapter 145, Section 8) is amended to read:

"17-2-43.1. JUDICIAL REVIEW--ADMINISTRATIVE ACTIONS.--

A. Any person adversely affected by an order of the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Any person adversely affected by a regulation adopted by the commission may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals within thirty days following the date of the filing of the regulation by the commission pursuant to the provisions of the State Rules Act.

C. Upon appeal, the court of appeals shall set aside the regulation only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

D. After a hearing and a showing of good cause by the appellant, a stay of the regulation being appealed may be granted:

(1) by the commission; or

(2) by the court of appeals if the commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

E. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals."

Chapter 265 Section 27

Section 27. Section 17-3-34 NMSA 1978 (being Laws 1912, Chapter 85, Section 35, as amended) is amended to read:

"17-3-34. REVOCATION OF LICENSE, CERTIFICATE OR PERMIT FOR VIOLATION OF LAW--NOTICE AND HEARING--JUDICIAL REVIEW.--

A. If the holder of any license, certificate or permit persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978 or of any regulations referred to in Section

17-2-10 NMSA 1978, the license, certificate or permit shall be revoked by the state game commission after reasonable notice given the accused of the alleged violation and after the accused is afforded an opportunity to appear and show cause against the charges.

B. At the hearing, the state game commission shall cause a record of the hearing to be made and shall allow the person charged to examine witnesses testifying at the hearing. Any person whose license, certificate or permit has been revoked by the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 28

Section 28. Section 19-7-17 NMSA 1978 (being Laws 1963, Chapter 237, Section 4) is amended to read:

"19-7-17. APPEAL.--A person in interest aggrieved by the decision of the commissioner in fixing the value of improvements or in collecting costs may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 29

Section 29. Section 19-7-67 NMSA 1978 (being Laws 1912, Chapter 82, Section 72, as amended) is amended to read:

"19-7-67. CONTEST--COMMISSIONER--APPEAL TO DISTRICT COURT.--A person aggrieved by a decision of the commissioner may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 30

Section 30. Section 19-10-23 NMSA 1978 (being Laws 1929, Chapter 125, Section 16, as amended) is amended to read:

"19-10-23. APPEAL OF COMMISSIONER'S DECISION.--A person or corporation aggrieved by a ruling or decision of the commissioner affecting his interest in any lease issued under or affected by the provisions relating to oil and gas leases of state lands may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 31

Section 31. Section 21-24-8 NMSA 1978 (being Laws 1971, Chapter 304, Section 8, as amended) is amended to read:

"21-24-8. JUDICIAL REVIEW.--Any final determination of the commission respecting the issuance, denial or revocation of a registration may be appealed to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 32

Section 32. Section 22-2-15 NMSA 1978 (being Laws 1978, Chapter 129, Section 2) is amended to read:

"22-2-15. HEARINGS--SUSPENSION CONTINUANCE AND DISCONTINUANCE--APPEALS.--

A. Within ten days after suspension, or within a reasonable time as the suspended local school board may request, the state board shall give a hearing to the local school board. At this hearing, the local school board may appear and show cause why the suspension should not be continued. The state board employees who conducted evaluations upon which the suspension was based shall appear and give testimony.

B. After the hearing, the state board shall continue or discontinue the suspension of the local school board.

C. Any local school board aggrieved by the decision of the state board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 33

Section 33. Section 22-10-22 NMSA 1978 (being Laws 1967, Chapter 16, Section 124, as amended) is amended to read:

"22-10-22. SUSPENSION AND REVOCATION OF CERTIFICATES--APPEAL.--

A. The state board may suspend or revoke a certificate held by a certified school instructor or administrator for incompetency, immorality or any other good and just cause.

B. A certificate may be suspended or revoked only according to the following procedure:

(1) the state board serving written notice of the suspension or revocation on the person holding the certificate in accordance with the law for service of process in civil actions. The notice of the suspension or revocation shall state the grounds for the suspension or revocation of the certificate. The notice of the suspension or revocation shall describe the rights of the person holding the certificate and include instructions for requesting a hearing before the state board. A hearing shall be requested within thirty days of receipt of the notice of suspension or revocation. If a hearing is requested, the hearing shall be held not more than ninety days from the date of the request for the hearing;

(2) the state board or its designated hearing officer conducting a hearing that provides the person holding the certificate, or his attorney, an opportunity to present evidence or arguments on all pertinent issues. A transcript shall be made of the entire hearing conducted by the state board or its designated hearing officer; and

(3) the state board rendering a written decision in accordance with the law and based upon evidence presented and admitted at the hearing. The written decision shall include findings of fact and conclusions of law and shall be based upon the findings of fact and the conclusions of law. A written copy of the decision of the state board shall be served upon the person holding the certificate within sixty days from the date of the hearing. Service of the written copy of the decision shall be in accordance with the law for service of process in civil actions or by certified mail to the person's address of record.

C. The secretary of the state board, with the approval of the state board or its designated hearing officer, may subpoena witnesses, require their attendance and giving of testimony and require the production of books, papers and records in connection with a hearing held pursuant to the provisions of Subsection B of this section. Also, the state board may apply to the district court for the issuance of subpoenas and subpoenas duces tecum in the name of and on behalf of the state board.

D. Any person aggrieved by a decision of the state board, after a hearing pursuant to this section, may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 34

Section 34. Section 24-1-5 NMSA 1978 (being Laws 1973, Chapter 359, Section 5, as amended) is amended to read:

"24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--APPEALS.--

A. No health facility shall be operated without a license issued by the department. If a health facility is found to be operating without a license, in order to protect human health or safety, the secretary may issue a cease-and-desist order. The health facility may request a hearing that shall be held in the manner provided in this section. The department may also proceed pursuant to the Health Facility Receivership Act.

B. The department is authorized to make inspections and investigations and to prescribe regulations it deems necessary or desirable to promote the health, safety and welfare of persons using health facilities.

C. Except as provided in Subsection F of this section, upon receipt of an application for a license to operate a health facility, the department shall promptly inspect the health facility to determine if it is in compliance with all rules of the department. Applications for hospital licenses shall include evidence that the bylaws or rules of the hospital apply equally to osteopathic and medical physicians. The department shall consolidate the applications and inspections for a hospital that also operates as a hospital-based primary care clinic.

D. Upon inspection of any health facility, if the department finds any violation of its rules, the department may deny the application for a license, whether initial or renewal, or it may issue a temporary license. A temporary license shall not be issued for a period exceeding one hundred twenty days, nor shall more than two consecutive temporary licenses be issued.

E. A one-year nontransferable license shall be issued to any health facility complying with all rules of the department. The license shall be renewable for successive one-year periods, upon filing of a renewal application, if the department is satisfied that the health facility is in compliance with all rules of the department or, if not in compliance with a rule, has been granted a waiver or variance of that rule by the department pursuant to procedures, conditions and guidelines adopted by rule of the department. Licenses shall be posted in a conspicuous place on the licensed premises, except that child-care centers that receive no state or federal funds may apply for and receive from the department a waiver from the requirement that a license be posted or kept on the licensed premises.

F. Any health facility that has been inspected and licensed by the department and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association may be granted a license renewal based on that accreditation. License renewals shall be issued upon application submitted by the facility upon forms prescribed by the department. This subsection does not limit in any way the department's various duties and responsibilities under other provisions of the Public Health Act or under any other subsection of this section, including any of the department's responsibilities for the health and safety of the public.

G. The department may charge a reasonable fee not to exceed three dollars ($3.00) per bed for an in-patient health facility or one hundred dollars ($100) for any other health facility for each license application, whether initial or renewal, of an annual license or the second consecutive issuance of a temporary license. Fees collected shall not be refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit to the general fund.

H. The department may revoke or suspend the license of a health facility or may impose on a health facility an intermediate sanction and a civil monetary penalty provided in Section 24-1-5.2 NMSA 1978 after notice and an opportunity for a hearing before a hearing officer designated by the department to hear the matter and, except for child-care centers and facilities, may proceed pursuant to the Health Facility Receivership Act upon a determination that the health facility is not in compliance with any rule of the department. If immediate action is required to protect human health and safety, the secretary may suspend a license or impose an intermediate sanction pending a hearing, provided the hearing is held within five working days of the suspension or imposition of

the sanction, unless waived by the licensee, and, except for child-care centers and facilities, may proceed ex parte pursuant to the Health Facility Receivership Act.

I. The department shall schedule a hearing pursuant to Subsection H of this section if the department receives a request for a hearing from a licensee:

(1) within ten working days after receipt by the licensee of notice of suspension, revocation, imposition of an intermediate sanction or civil monetary penalty or denial of an initial or renewal application;

(2) within four working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction imposition and notice of hearing if the licensee wishes to waive the early hearing scheduled and request a hearing at a later date; or

(3) within five working days after receipt of a cease-and-desist order.

The department shall also provide timely notice to the licensee of the date, time and place of the hearing, identity of the hearing officer, subject matter of the hearing and alleged violations.

J. Any hearing held pursuant to provisions of this section shall be conducted in accordance with adjudicatory hearing rules and procedures adopted by regulation of the department. The licensee has the right to be represented by counsel, to present all relevant evidence by means of witnesses and books, papers, documents, records, files and other evidence and to examine all opposing witnesses who appear on any matter relevant to the issues. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum prior to or after the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents, records, files and other evidence. Documents or records pertaining to abuse, neglect or exploitation of a resident, client or patient of a health facility or other documents, records or files in the custody of the human services department or the office of the state long-term care ombudsman at the state agency on aging that are relevant to the alleged violations are discoverable and admissible as evidence in any hearing.

K. Any party may appeal the final decision of the department pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

L. Every complaint about a health facility received by the department pursuant to this section shall be promptly investigated to substantiate the allegation and to take appropriate action if substantiated. The department shall coordinate with the human services department, the office of the state long-term care ombudsman at the state agency on aging and any other appropriate agency to develop a joint protocol establishing responsibilities and procedures to assure prompt investigation of complaints, including prompt and appropriate referrals and necessary action regarding

allegations of abuse, neglect or exploitation of residents, clients or patients in a health facility.

M. Complaints received by the department pursuant to this section shall not be disclosed publicly in a manner as to identify any individuals or health facilities if upon investigation the complaint is unsubstantiated.

N. Notwithstanding any other provision of this section, where there are reasonable grounds to believe that any child is in imminent danger of abuse or neglect while in the care of a child-care facility, whether or not licensed, or upon the receipt of a report pursuant to Section 32A-4-3 NMSA 1978, the department shall consult with the owner or operator of the child-care facility. Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child-care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator. Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child-care facility, the secretary may suspend operation of the child-care facility for a period not in excess of fifteen days. Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child-care facility of the notice and opportunity for hearing given to the owner or operator.

O. Nothing contained in this section or in the Public Health Act shall authorize either the secretary or the department to make any inspection or investigation or to prescribe any regulations concerning group homes as defined in Section 9-8-13 NMSA 1978 except as are reasonably necessary or desirable to promote the health and safety of persons using group homes."

Chapter 265 Section 35

Section 35. Section 25-1-11 NMSA 1978 (being Laws 1977, Chapter 309, Section 11, as amended) is amended to read:

"25-1-11. JUDICIAL REVIEW OF BOARD AND DIVISION ACTIONS.--

A. Rules adopted by the board are subject to judicial review under the provisions of Section 74-1-9 NMSA 1978.

B. Any person to whom the division denies a permit or whose permit is suspended or revoked by the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 36

Section 36. Section 25-3-12 NMSA 1978 (being Laws 1969, Chapter 89, Section 7, as amended) is amended to read:

"25-3-12. CONDEMNATION AND APPEAL.--The inspector at official establishments shall condemn all diseased or otherwise unfit carcasses and parts of carcasses, including the viscera. The condemned parts shall be removed from the slaughtering department of the plant in equipment designated for that purpose and shall be destroyed for food purposes under the supervision of the inspector. If any official establishment wishes to appeal a decision of an inspector as to carcasses or parts of carcasses that have been condemned, the establishment may appeal the decision to the chief veterinary meat inspector or any veterinarian he designates. If the establishment is not satisfied and wishes to make a further appeal, it may submit an appeal to the board, whose decision shall be final unless the person aggrieved appeals to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 37

Section 37. Section 25-3-19 NMSA 1978 (being Laws 1969, Chapter 89, Section 14, as amended) is amended to read:

"25-3-19. SUSPENSION OR REVOCATION OF INSPECTION SERVICE OR ESTABLISHMENT NUMBER--HEARING--APPEAL.--

A. Any license issued by the board or any state meat inspection service or establishment numbers may be suspended or revoked by the board for violation or noncompliance with:

(1) any provision of the Meat Inspection Act; or

(2) any rule issued pursuant to the Meat Inspection Act.

B. State meat inspection service or establishment numbers may be suspended or revoked only after a hearing before the board upon reasonable notice. Notice shall be given the licensee by service of the complaint upon him.

C. The decision of the board shall be final in any matter relating to renewal, suspension or revocation of state meat inspection service or establishment numbers unless the person aggrieved appeals to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 38

Section 38. Section 25-7B-9 NMSA 1978 (being Laws 1993, Chapter 188, Section 28, as amended) is amended to read:

"25-7B-9. JUDICIAL REVIEW OF DEPARTMENT ACTIONS.--Any person to whom the department denies a permit or whose permit is suspended or revoked by the department may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 39

Section 39. Section 27-3-4 NMSA 1978 (being Laws 1973, Chapter 256, Section 4, as amended) is amended to read:

"27-3-4. APPEAL.--Within thirty days after receiving written notice of the decision of the director pursuant to Section 27-3-3 NMSA 1978, an applicant or recipient may file a notice of appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 40

Section 40. Section 27-5-12.1 NMSA 1978 (being Laws 1979, Chapter 146, Section 3, as amended) is amended to read:

"27-5-12.1. APPEAL.--Any hospital or ambulance service aggrieved by any decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 41

Section 41. Section 28-17-19 NMSA 1978 (being Laws 1989, Chapter 208, Section 19, as amended) is amended to read:

"28-17-19. INTERFERENCE WITH THE OFFICE AND RETALIATION PROHIBITED--PENALTY--CIVIL--APPEAL.--

A. No person shall willfully interfere with the lawful actions of the office, including the request for immediate entry into a long-term care facility.

B. No person shall institute discriminatory, disciplinary or retaliatory action against any resident, employee or other person for filing a complaint, providing information to or otherwise cooperating with a representative of the office.

C. Any person who violates Subsection A of this section shall be subject to a civil penalty of up to five thousand dollars ($5,000) per occurrence. Any person who violates Subsection B of this section shall be subject to a civil penalty of up to ten thousand dollars ($10,000) per occurrence. The agency may assess and collect the penalty after notice and an opportunity for hearing, before a hearing officer designated by the agency to hear the matter, upon a determination that a person willfully interfered with the office or discriminated, disciplined or retaliated against an individual who communicated or disclosed information to the office in good faith pursuant to Subsection A or B of this section. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum. However, if the violation is against a person covered by the Personnel Act, the office shall refer the matter to the agency employing the person for disciplinary action.

D. Any party may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 42

Section 42. Section 29-2-11 NMSA 1978 (being Laws 1941, Chapter 147, Section 11, as amended) is amended to read:

"29-2-11. DISCIPLINARY PROCEEDINGS--APPEAL.--

A. No officer of the New Mexico state police holding a permanent commission shall be removed from office, demoted or suspended except for incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer, except as provided in this section.

B. The secretary may suspend an officer for disciplinary reasons for not more than thirty days in accordance with New Mexico state police rules. Any officer holding a permanent commission who is suspended by the secretary has the right to have the suspension reviewed by the commission, but without further review or appeal.

C. In the event the officer is to be removed from office, demoted or suspended for a period of more than thirty days, specific written charges shall be filed with the commission. Timely and adequate notice of the charges to the person charged shall be provided and a prompt hearing on the charges shall be held by the commission. The person charged has the right to be represented by counsel of his own choice and at his own expense at the hearings. A complete record of the hearing shall be made and, upon request, a copy of it shall be furnished to the person charged. The person may require that the hearing be public.

D. In the event the commission finds that the person charged shall be removed, demoted or suspended for a period in excess of thirty days, the person may appeal from the decision of the commission to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 43

Section 43. Section 29-10-8 NMSA 1978 (being Laws 1977, Chapter 339, Section 5, as amended) is amended to read:

"29-10-8. REVIEW OF ARREST RECORD INFORMATION--APPEAL.--A person who believes that arrest record information concerning him is inaccurate or incomplete is, upon satisfactory verification of his identity, entitled to review the information and obtain a copy of it for the purpose of challenge or correction. In the event a law enforcement agency refuses to correct challenged information to the satisfaction of the person to whom the inaccurate or incorrect information relates, the person is entitled to appeal to

the district court to correct the information pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 44

Section 44. Section 32A-2-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 33, as amended) is amended to read:

"32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--APPEALS.--

A. The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978.

B. The department shall inspect all detention facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If as the result of an inspection a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.

C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act.

D. Any person aggrieved by an administrative decision of the department rendered under the provisions of this section may petition for the review of the administrative decision by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department."

Chapter 265 Section 45

Section 45. Section 36-1A-9 NMSA 1978 (being Laws 1991, Chapter 175, Section 9, as amended) is amended to read:

"36-1A-9. APPEALS BY COVERED EMPLOYEES TO THE BOARD-- JUDICIAL REVIEW.--

A. A covered employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appellant and the agency whose action is reviewed shall have the right to be heard publicly and to present facts pertinent to the appeal.

B. Formal rules of evidence shall not apply to appeals to the board.

C. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. The cost of transcripts may be assessed by the court to the losing party on appeal.

D. Appeals may be heard, at the election of the appellant, either by the board or by a hearing officer selected by the state personnel office. If the appellant does not elect to have his case heard by a state-personnel-office-designated hearing officer as provided in this section, the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing held pursuant to this section. This latter hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law.

E. If the appellant chooses to have his case heard by a state-personnel-office-designated hearing officer, the appellant shall elect in writing within twenty days after filing the notice of appeal to have his appeal heard solely by a state-personnel-office-designated hearing officer. In the event of that election, the board shall promptly make that request to the state personnel office and promptly execute any and all documents necessary to implement this election. The state personnel office shall promptly arrange for the hearing officer without charge. This hearing officer shall have all of the rights, duties and responsibilities provided to the board by the District Attorney Personnel and Compensation Act, and that hearing officer's decision shall be binding and of the same force and effect as if the board itself had rendered the final decision.

F. If the board or the state-personnel-office-designated hearing officer finds that the action taken was without just cause, the board or the state-personnel-office-designated hearing officer may modify the disciplinary action or order the reinstatement of the appellant to his former position or to a position of like status and pay. When the board or the state-personnel-office-designated hearing officer orders a reinstatement of an appellant, the reinstatement shall be effective within thirty days after the service of a written copy of the decision on the affected party. The board or the state-personnel-

office-designated hearing officer may award back pay as of the date of the dismissal, demotion or suspension or as of such later date as the order may specify.

G. A party aggrieved by the decision of the board or the state-personnel-office-designated hearing officer made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 46

Section 46. 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 or foster home for failure to comply with the division's rules. The holder of the license sought 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. 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 person 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. When any license is denied, suspended, revoked or not renewed, the care and custody of any child placed pursuant to the Child Placement Agency Licensing Act shall be transferred to the certifying child placement agency or the division."

Chapter 265 Section 47

Section 47. Section 42-3-14 NMSA 1978 (being Laws 1972, Chapter 41, Section 15, as amended) is amended to read:

"42-3-14. ADMINISTRATIVE HEARINGS--COURT REVIEW.--

A. A person aggrieved by a determination as to eligibility for relocation payments or the amount of payment received under the Relocation Assistance Act shall have the right to

a hearing before the displacing agency or before a hearing officer designated by the displacing agency.

B. After the hearing, a person aggrieved or affected by a final administrative determination concerning eligibility for relocation payments or the amount of the payment under the Relocation Assistance Act may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 48

Section 48. Section 47-6-15 NMSA 1978 (being Laws 1973, Chapter 348, Section 15, as amended) is amended to read:

"47-6-15. APPEALS.--

A. A party who is or may be adversely affected by a decision of a delegate of the board of county commissioners in approving or disapproving a final plat under summary review shall appeal the delegate's decision to the board of county commissioners within thirty days of the date of the delegate's decision. The board of county commissioners shall hear the appeal and shall render a decision within thirty days of the date the board receives notice of the appeal. Thereafter, the procedure for appealing the decision of the board of county commissioners set out in Subsection B of this section shall apply.

B. A party who is or may be adversely affected by a decision of the board of county commissioners in approving or disapproving a preliminary or final plat may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 49

Section 49. Section 50-9-15 NMSA 1978 (being Laws 1972, Chapter 63, Section 14, as amended) is amended to read:

"50-9-15. VALIDITY OF REGULATION--VARIANCE DETERMINATION--JUDICIAL REVIEW.--

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation pursuant to the State Rules Act. The board shall be made a party to the action.

B. Upon appeal, the court of appeals shall set aside a regulation only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

C. A variance petitioner may appeal to the district court from an order of the department denying the variance. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 50

Section 50. Section 50-9-17 NMSA 1978 (being Laws 1972, Chapter 63, Section 16, as amended) is amended to read:

"50-9-17. ENFORCEMENT--APPEALS.--

A. If as a result of investigation the department has good cause to believe that any employer is violating any provision of the Occupational Health and Safety Act or any rule of the board, the department shall send prompt notice of the violation by certified mail to the employer believed to be in violation. The citation shall describe with particularity the provision of the Occupational Health and Safety Act or rule alleged to have been violated. The notice shall also state the time for abatement of the violation. Each citation issued pursuant to this section, or a copy thereof, shall be promptly and prominently posted by the cited employer, as prescribed in rules issued by the board, at or near the place where the violation occurred. No citation may be issued under this section after the expiration of six months following the occurrence of any violation. The board may issue a regulation prescribing procedures for the use of a notice in lieu of a citation with respect to de minimis violations that have no direct or immediate relationship to safety or health.

B. If the department issues a citation as provided in Subsection A of this section, it shall, within a reasonable time after issuance of the citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the citation or proposed penalty. If within fifteen working days from the receipt of the notice issued by the department the employer fails to notify the department that he intends to contest the citation or proposed penalty and no notice is filed by an employee or employee representative as provided by Subsection D of this section within that time, the citation and the assessment of penalty, if any, as proposed shall be deemed the final order of the commission and not subject to review by any court or agency.

C. If the department has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted, which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the department shall notify the employer by certified mail of the failure to correct and of the penalty proposed to be assessed by reason of the failure and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the department's

notification or the proposed assessment of penalty. If within fifteen working days from the receipt of notification issued by the department the employer fails to notify the department that he intends to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be deemed a final order of the commission and not subject to review by any court or department.

D. If any employer notifies the department in writing that he intends to contest the citation issued to him pursuant to provisions of Subsection A of this section or notification issued pursuant to provisions of Subsection B or C of this section or if within fifteen working days of the receipt of notice pursuant to the provisions of this section any employee of an employer cited or any employee's representative files a notice with the department alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission within fifteen days after the administrative review. The commission shall afford an opportunity for a hearing within thirty days after receipt of the petition. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the department's citation or the proposed penalty fixed by the department or directing other appropriate relief.

E. At any time prior to the expiration of an abatement period, an employer may notify the department in writing that he is unable to take the corrective action required within the period of abatement. The department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission after the administrative review. The commission shall afford prompt opportunity for a hearing after receipt of the petition. The only grounds for modifying an abatement period provided by this subsection are a showing by the employer of a good-faith effort to comply with the abatement requirement of a citation and that abatement has not been completed because of factors beyond the employer's control.

F. Affected employees or their representatives shall be provided an opportunity to participate as parties at both informal administrative review and commission hearings provided for in this section.

G. Any person, including the department, adversely affected by an order of the commission issued pursuant to provisions of this section may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 51

Section 51. Section 53-8-91 NMSA 1978 (being Laws 1975, Chapter 217, Section 89, as amended) is amended to read:

"53-8-91. APPEAL FROM COMMISSION.--

A. If the commission fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by the Nonprofit Corporation Act to be approved by the commission before the same is filed in its office, the commission shall, within fifteen working days after the delivery thereof, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The person or corporation may appeal the disapproval to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission revokes a certificate of authority to conduct affairs in New Mexico of any foreign corporation or a certificate of incorporation of a domestic corporation, pursuant to the provisions of the Nonprofit Corporation Act, the foreign or domestic corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 52

Section 52. Section 53-18-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 123, as amended) is amended to read:

"53-18-2. APPEAL FROM COMMISSION.--

A. If the commission fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution or any other document required by the Business Corporation Act to be approved by the commission before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From the disapproval, the person or corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission revokes the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of the Business Corporation Act, the foreign corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 53

Section 53. Section 53-19-67 NMSA 1978 (being Laws 1993, Chapter 280, Section 67, as amended) is amended to read:

"53-19-67. APPEAL FROM COMMISSION.--If the commission fails to approve any articles of organization, articles of amendment, articles of merger or consolidation or articles of dissolution or any other document required or permitted by the Limited Liability Company Act to be approved by the commission before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person delivering the same, specifying the reasons therefor. From the

disapproval, the person may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 54

Section 54. Section 57-19-36 NMSA 1978 (being Laws 1993, Chapter 98, Section 12, as amended) is amended to read:

"57-19-36. PENALTIES--ADMINISTRATIVE PROCEDURES-- APPEALS.--

A. No person, by himself, by his servant or agent or as the servant or agent of another person shall:

(1) violate the provisions of the Petroleum Products Standards Act;

(2) violate any regulation adopted pursuant to the Petroleum Products Standards Act; or

(3) misrepresent a petroleum product as meeting the standards of the Petroleum Products Standards Act.

B. Any person who violates Subsection A of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. The board shall establish a system of administrative penalties for violations of the Petroleum Products Standards Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt rules that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the Petroleum Products Standards Act by any person;

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation;

(3) provisions shall be included for due process, including proper notification of administrative proceedings, right to discovery of charges and evidence and appeal procedures; and

(4) prior to assessing administrative penalties pursuant to the provisions of the Petroleum Products Standards Act, the department shall comply with Paragraphs (2) and (3) of this subsection.

D. Appeals from decisions of the director regarding the assessment of an administrative penalty shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 55

Section 55. Section 58-1-45 NMSA 1978 (being Laws 1963, Chapter 305, Section 34, as amended) is amended to read:

"58-1-45. COURT REVIEW.--Any person aggrieved and directly affected by an order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 56

Section 56. Section 58-10-13 NMSA 1978 (being Laws 1967, Chapter 61, Section 13, as amended) is amended to read:

"58-10-13. REFUSAL OF CHARTER APPLICATION--APPEAL.--

A. Whenever the supervisor is unable to make the findings required by Section 58-10-12 NMSA 1978, he shall serve upon each party of record and his attorney, if any, a written copy of his decision denying the application by certified mail to the party's address of record. All parties shall be deemed to have been served on the tenth day following the mailing. The decision shall include:

(1) findings of fact made by the supervisor;

(2) conclusions of law reached by the supervisor; and

(3) the decision of the supervisor based upon the findings of fact and conclusions of law.

B. Any party aggrieved by the decision of the supervisor may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 57

Section 57. Section 58-10-84 NMSA 1978 (being Laws 1967, Chapter 61, Section 81, as amended) is amended to read:

"58-10-84. WHEN ORDER IS FINAL--APPEAL.--

A. If a hearing has been held in regard to an order made pursuant to Section 58-10-80 or 58-10-81 NMSA 1978 and the supervisor's order is continued either in its original form or a modified form, the order is final when the supervisor enters his decision in the

record of the hearing after the hearing. If no hearing is requested on the order, the order is final after the expiration of thirty days from the date the order is entered by the supervisor.

B. The supervisor's decision after any hearing under the Savings and Loan Act shall be served on each party of record and shall contain the same elements as required in Section 58-10-13 NMSA 1978. Any party aggrieved by the decision of the supervisor after hearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 58

Section 58. Section 58-11-4 NMSA 1978 (being Laws 1987, Chapter 311, Section 4) is amended to read:

"58-11-4. APPEAL RIGHTS AND COURT REVIEW.--Any person aggrieved or directly affected by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 59

Section 59. Section 58-13A-21 NMSA 1978 (being Laws 1985, Chapter 163, Section 21, as amended) is amended to read:

"58-13A-21. JUDICIAL REVIEW OF ORDERS.--

A. Any person aggrieved by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings."

Chapter 265 Section 60

Section 60. Section 58-13B-56 NMSA 1978 (being Laws 1986, Chapter 7, Section 56, as amended) is amended to read:

"58-13B-56. JUDICIAL REVIEW OF ORDERS.--

A. Any person aggrieved by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order, and the

director may enforce or ask the court to enforce the order pending the outcome of the review proceedings."

Chapter 265 Section 61

Section 61. Section 58-15-25 NMSA 1978 (being Laws 1955, Chapter 128, Section 23, as amended) is amended to read:

"58-15-25. REVIEW.--Any licensee or any person aggrieved by any act or order of the director pursuant to the New Mexico Small Loan Act of 1995 may file and appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 62

Section 62. Section 58-19-4 NMSA 1978 (being Laws 1959, Chapter 204, Section 4, as amended) is amended to read:

"58-19-4. SUSPENSION OR REVOCATION OF LICENSES--RENEWAL LICENSE DENIED--APPEALS.--

A. Renewal of a license originally granted under the Motor Vehicle Sales Finance Act may be denied or a license may be suspended or revoked by the director on any of the following grounds:

(1) material misstatement in application for license;

(2) willful failure to comply with any provision of that act relating to retail installment contracts;

(3) defrauding any retail buyer to the buyer's detriment while a licensee under that act;

(4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars required to be stated or furnished to the retail buyer under that act; or

(5) during the course of examination, the licensee intentionally furnished the examiner or duly authorized representative with false or misleading information so as to prevent discovery of apparent violations of that act.

B. If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has acted or failed to act in the conduct of the business under its license as would be cause for suspending or revoking a license to the person as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent, if the licensee

after actual knowledge of the acts retained the benefits, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

C. No license shall be denied, suspended or revoked except after hearing. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the principal place of business. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking a license shall recite the grounds upon which the order is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof, given after the entry, forwarded by certified mail to the licensee at his principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously by the licensee.

D. A person aggrieved by the denial, suspension or revocation of a license may file an appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. The director shall publish a notice that a license has been revoked or suspended within thirty days after the revocation or suspension in a newspaper of general circulation in the county in which the licensee was doing business."

Chapter 265 Section 63

Section 63. Section 58-21-16 NMSA 1978 (being Laws 1983, Chapter 86, Section 16, as amended) is amended to read:

"58-21-16. REVIEW OF ORDER OF DIRECTOR.--

A. Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The commencement of the proceedings under Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order."

Chapter 265 Section 64

Section 64. Section 58-22-29 NMSA 1978 (being Laws 1983, Chapter 135, Section 29, as amended) is amended to read:

"58-22-29. REVIEW OF ORDER OF DIRECTOR.--

A. Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The commencement of proceedings pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order."

Chapter 265 Section 65

Section 65. 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. 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 265 Section 66

Section 66. Section 59A-11A-4 NMSA 1978 (being Laws 1989, Chapter 97, Section 4, as amended) is amended to read:

"59A-11A-4. INSURANCE CONSULTANT LICENSE--SUSPENSION OR REVOCATION--APPEAL--PENALTY.--

A. The superintendent may revoke the license of an insurance consultant or suspend it for a period not exceeding the expiration date of the license for any good cause shown as provided in the Insurance Code. The superintendent shall revoke or suspend a license only upon notice and hearing as provided in the Insurance Code.

B. Any person aggrieved by the action of the superintendent in revoking, suspending or refusing to grant, renew or reissue a license may appeal that action to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. The superintendent may at any time require such information as he deems necessary in respect to the business methods, policies and transactions of a licensee. Any person who fails or refuses to furnish the superintendent in the form he may require any such information within ten days after receiving a written request for it is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500)."

Chapter 265 Section 67

Section 67. Section 59A-17-35 NMSA 1978 (being Laws 1984, Chapter 127, Section 330, as amended) is amended to read:

"59A-17-35. APPEALS FROM PUBLIC REGULATION COMMISSION.--Any order made by the public regulation commission pursuant to Section 59A-17-34 NMSA 1978 shall be subject to review by appeal to the district court pursuant to the provisions of Section

39-3-1.1 NMSA 1978. Upon institution of the appeal and for good cause shown upon motion and hearing, the court may, in the following cases, stay operation of the commission's order:

A. where, pursuant to Chapter 59A, Article 17 NMSA 1978, a rate service organization has been refused a license or an insurer has been refused a certificate of authority or had its license or certificate of authority suspended, it may, with leave of court, be allowed to continue to engage in business, subject to the provisions of that article, pending final disposition of its application for review; or

B. where any order of the public regulation commission shall provide for, or sustain the superintendent's order for, a change in any rate or rating system that results in an increase or decrease in rates, any insurer affected may, with leave of court pending final disposition of the proceedings in the district court, continue to charge rates that existed prior to such order, on condition that the difference in the rates be deposited in a special escrow or trust account with a reputable financial institution by the insurer affected, to be held in trust by such insurer and to be retained by the insurer or paid to the holders of policies issued after the order of the court, as the court may determine."

Chapter 265 Section 68

Section 68. Section 59A-29-6 NMSA 1978 (being Laws 1985, Chapter 61, Section 6, as amended) is amended to read:

"59A-29-6. APPEALS--JUDICIAL REVIEW.--

A. A person aggrieved by an action or decision of the administrators of the FAIR plan or the underwriting association or of any insurer as a result of its participation may appeal to the superintendent within thirty days from the date of the action or the decision. The superintendent shall, after hearing held upon thirty days' written notice, issue an order approving the action or decision or disapproving the action or decision with respect to the matter that is the subject of appeal.

B. All final orders and decisions of the superintendent shall be subject to judicial review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 69

Section 69. Section 59A-42-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 761, as amended) is amended to read:

"59A-42-12. APPEALS.--

A. A member insurer may appeal to the superintendent from an action of the board of directors of the association by filing with the superintendent a notice of appeal within thirty days after the action appealed from.

B. A final order of the superintendent on appeal is subject to judicial review by an action in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 70

Section 70. Section 59A-43-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 780, as amended) is amended to read:

"59A-43-14. APPEALS.--

A. A claimant whose claim is denied in whole or in part by the association may, pursuant to Chapter 59A, Article 43 NMSA 1978, request the receivership court to review the decision of the association. A request for review shall be filed within thirty days of the denial. The receivership court shall have jurisdiction of all claims and the decision of the court shall be binding on both the claimant and the association.

B. A member insurer may appeal to the superintendent from an action of the board of directors of the association by filing with the superintendent a notice of appeal within thirty days after the action appealed from.

C. A final order of the superintendent on appeal is subject to judicial review by an action in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 71

Section 71. Section 59A-47-29 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.28, as amended) is amended to read:

"59A-47-29. SETTLEMENT OF DISPUTES--APPEAL.--The parties to a dispute between a health care plan and a purveyor arising out of a health care expense payments contract may submit the dispute to the superintendent for his final decision and his final decision shall then be binding upon the parties to the contract. A party to the contract may seek review of the superintendent's decision by filing an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 72

Section 72. Section 59A-52-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 968, as amended) is amended to read:

"59A-52-22. JUDICIAL REVIEW OF ORDER.--A person aggrieved by a decision of the state fire marshal may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 73

Section 73. Section 60-2B-4 NMSA 1978 (being Laws 1981, Chapter 259, Section 4, as amended) is amended to read:

"60-2B-4. LICENSING AUTHORITY--POWERS--DUTIES--HEARINGS--APPEALS.--

A. The regulation and licensing department is designated as the "licensing authority" of the Bingo and Raffle Act. The superintendent of regulation and licensing is the executive in charge of enforcement of the terms and provisions of that act and, as the state licensing authority, has the powers and duties as follows:

(1) to grant or refuse licenses under the Bingo and Raffle Act. In addition, the licensing authority has the power, on its own motion based on reasonable grounds or on complaint made and after investigation by the special investigations division of the department of public safety and public hearing at which the licensee shall be afforded an opportunity to be heard, to assess administrative fines to the licensee and to suspend or revoke any license issued by the licensing authority for any violation by the licensee or any officer, director, agent, member or employee of the licensee of the provisions of that act or any rule or regulation authorized under that act. Notice of suspension or revocation, as well as notice of the hearing, shall be given by certified mail to the licensee at the address contained in the license. Any license may be temporarily suspended for a period not to exceed thirty days pending any prosecution, investigation or public hearing;

(2) to supervise the administration of the Bingo and Raffle Act and to adopt, amend and repeal rules and regulations governing the holding, operating and conducting of games of chance, the rental of premises and the purchase of equipment to the end that games of chance shall be held, operated and conducted only by licensees for the purposes and in conformity with the constitution of New Mexico and the provisions of that act;

(3) to hear and determine at public hearings all complaints against any licensee and to administer oaths and issue subpoenas to require the presence of persons and production of papers, books and records necessary to the determination of any hearing held;

(4) to keep records of all actions and transactions of the licensing authority;

(5) to prepare and transmit annually, in the form and manner prescribed by the licensing authority pursuant to the provisions of law, a report accounting to the governor and the legislature for the efficient discharge of all responsibilities assigned by law or directive to the licensing authority; and

(6) to issue publications of the licensing authority intended for circulation in quantity outside the executive branch in accordance with fiscal rules promulgated by the licensing authority.

B. Proceedings brought against a licensee for a violation of the Bingo and Raffle Act shall be brought by the licensing authority by serving, in the manner provided in the rules of civil procedure, a complaint upon the licensee and notifying the licensee of the place and date, not less than twenty days after the date of service, at which a hearing shall be held. The complaint shall set forth, in the manner of complaints in civil action, the violations of the Bingo and Raffle Act or the rules and regulations of the licensing authority that the licensing authority alleges the licensee has committed. The licensing authority or the department of public safety may stop the operation of a game of chance pending hearing, in which case the hearing shall be held within ten days after notice.

C. The licensing authority shall cause the notice of hearing to be served personally upon an officer of the licensee or the member in charge of the conduct of the game of chance or to be sent by registered or certified mail to the licensee at the address shown in the license.

D. When proceedings are brought against a licensee for a violation of the Bingo and Raffle Act, the licensing authority shall hear the matter and make written findings in support of its decision. The licensee shall be informed immediately of the decision and, in the event of a suspension or revocation, the effective date of the suspension or revocation.

E. For the first violation by a licensee of the Bingo and Raffle Act, the licensing authority may assess an administrative fine of not to exceed one thousand dollars ($1,000). For a second or subsequent violation by the licensee of that act, the licensing authority may assess an administrative fine of not to exceed two thousand five hundred dollars ($2,500). The amount of the administrative fine shall be determined by the severity and nature of the violation of the Bingo and Raffle Act and by the number of prior violations of that act.

F. When a license is ordered suspended or revoked, the licensee shall surrender the license to the licensing authority on or before the effective date of the suspension or revocation. No license is valid beyond the effective date of the suspension or revocation, whether surrendered or not.

G. Upon the finding of a violation of the Bingo and Raffle Act or the rules and regulations, or both, that would warrant the suspension or revocation of a license, the licensing authority, in addition to any other penalties that may be imposed, may declare the violator ineligible to conduct a game of chance and to apply for a license under that act for a period not exceeding twelve months. The declaration of ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization or an organization otherwise affiliated with the violator when in the opinion of the licensing authority the circumstances of the violation warrant that action.

H. Upon receipt by a licensee of a complaint signed by the licensing authority and notice of a hearing, the licensee shall answer, in the manner of civil actions, the complaint and

inform the licensing authority whether oral argument is desired and whether the licensee desires to produce witnesses.

I. At the request of any party and for good cause shown, the licensing authority or the department of public safety shall issue subpoenas for the attendance of witnesses and the production of books, records and other documents, but in no case shall a subpoena be made returnable more than five days after service.

J. Whenever oral testimony of witnesses is taken at the hearing, the licensing authority or the department of public safety shall have a certified reporter present to prepare a record of the proceedings. The original transcript shall be filed with the licensing authority. Any party is entitled to secure a copy from the reporter at his own expense.

K. Hearings may be convened by the licensing authority from time to time at the request of any party, but only for good cause shown. Hearings shall be held and concluded with reasonable dispatch and without unnecessary delay. The licensing authority shall decide any matter within thirty days of the hearing.

L. Upon the determination of any matter heard, the licensing authority shall state its findings. All parties shall be notified by the licensing authority of the action of the licensing authority and shall be furnished a copy of the findings.

M. Applicants for a license or the licensee may be represented by counsel.

N. Any person appearing before the licensing authority in a representative capacity shall be required to show his authority to act in that capacity.

O. No person shall be excused from testifying or producing any book or document in any investigation or hearing when ordered to do so by the licensing authority upon the ground that testimony or documentary evidence required of him may tend to incriminate or subject him to penalty or forfeiture, but no person may be prosecuted, punished or subjected to any penalty or forfeiture on account of any matter or thing concerning which he, under oath, testified or produced documentary evidence, except that he shall not be exempt from prosecution or punishment for any perjury committed by him in his testimony.

P. If a person subpoenaed to attend in any investigation or hearing fails to obey the command of the subpoena without reasonable cause or if a person in attendance in any investigation or hearing refuses, without lawful cause, to be examined or to answer a legal or pertinent question or to exhibit any book, account, record or other document when ordered to do so by the representative of the licensing authority holding the hearing or by the department of public safety performing the investigation, the licensing authority or the department of public safety may apply to any judge of the district court, upon proof by affidavit of the facts, for an order returnable in not less than five nor more than ten days directing the person to show cause before the judge why he should not comply with the subpoena or order.

Q. Upon return of the order, the judge before whom the matter comes for hearing shall examine the person under oath. If the judge determines after giving the person an opportunity to be heard that he refused without lawful excuse to comply with the subpoena or the order of the licensing authority or the department of public safety holding the investigation, the judge may order the person to comply with the subpoena or order forthwith, and any failure to obey the order of the judge may be punished as a contempt of the district court.

R. Every witness is entitled to be paid for attendance or attendance and travel by the party on whose behalf he is subpoenaed, at the rates prescribed by law, before being required to testify.

S. The decision of the licensing authority in suspending or revoking any license under the Bingo and Raffle Act shall be subject to review. A licensee aggrieved by a decision of the licensing board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

T. No proceeding to vacate, reverse or modify any final order rendered by the licensing authority shall operate to stay the execution or effect of any final order unless the district court, on application and three days' notice to the licensing authority, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute his bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of his obligation as a licensee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings."

Chapter 265 Section 74

Section 74. Section 60-6B-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 38, as amended by Laws 1998, Chapter 55, Section 71 and also by Laws 1998, Chapter 93, Section 1) is amended to read:

"60-6B-2. APPLICATIONS.--

A. Before any new license authorized by the Liquor Control Act may be issued by the director, the applicant for the license shall:

(1) submit to the director a written application for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of one hundred fifty dollars ($150);

(2) submit to the director for his approval a description, including floor plans, in a form prescribed by the director, which shows the proposed licensed premises for which the

license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) if the applicant is a corporation, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than ten percent of the stock would not be eligible to hold a license pursuant to the Liquor Control Act, except that the provision of Subsection D of Section 60-6B-1 NMSA 1978 shall not apply if the stock is listed with a national securities exchange;

(c) the name of the resident agent of the corporation authorized to accept service of process for all purposes, including orders and notices of the director, which agent shall be approved by the director with respect to his character;

(d) a duly executed power of attorney authorizing the agent described in Subparagraph (c) of this paragraph to exercise full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to the sale of alcoholic beverages under authority of the license requested; and

(e) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(4) if the applicant is a limited partnership, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. No limited partnership shall receive a license if any partner designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility; and

(5) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Every applicant for a new license or for a transfer of ownership of a license, if an individual or general partnership, shall file with the application two complete sets of fingerprints of each individual, taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff or a municipal chief of police. If the applicant is a corporation, it shall file two complete sets of fingerprints for each stockholder holding ten percent or more of the outstanding stock, principal officer, director and the agent responsible for the operation of the licensed business. The fingerprints shall be taken and certified to as provided for an individual or partnership. If the applicant is a limited partnership, it shall file two complete sets of fingerprints for each general partner and for each limited partner contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The fingerprints shall be taken and certified to as provided for an individual or partnership.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

D. An applicant who files a false affidavit shall be denied a license. When the director determines a false affidavit has been filed, he shall refer the matter to the attorney general or district attorney for prosecution of perjury.

E. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection K of this section.

G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license. It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. No license shall be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the

license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in any calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. No person shall file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

J. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

M. Before any new license is issued for a location, the director shall cause a notice of the application therefor to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the

premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to preliminary approval of the license.

N. No license shall be issued until the posting requirements of Subsection M of this section have been met.

O. All costs of publication and posting shall be paid by the applicant.

P. It is unlawful for any person to remove or deface any notice posted in accordance with this section. Any person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars ($300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. Any person aggrieved by any decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to any appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court."

Chapter 265 Section 75

Section 75. Section 60-6C-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 102, as amended) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL.--

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as he may find are just, in his discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party."

Chapter 265 Section 76

Section 76. Section 61-1-17 NMSA 1978 (being Laws 1957, Chapter 247, Section 17, as amended) is amended to read:

"61-1-17. PETITION FOR REVIEW.--A person entitled to a hearing provided for in the Uniform Licensing Act, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 77

Section 77. Section 61-18A-32 NMSA 1978 (being Laws 1987, Chapter 252, Section 32, as amended) is amended to read:

"61-18A-32. JUDICIAL REVIEW.--A person aggrieved by the decision of the director in the enforcement of the Collection Agency Regulatory Act may obtain judicial review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 78

Section 78. Section 66-4-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 216, as amended) is amended to read:

"66-4-3. REFUSAL TO ISSUE LICENSE--CANCELLATION OR SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS--HEARING--APPEAL.--

A. The department may refuse to issue a license for just cause and may cancel or suspend a license or use of temporary permits for violation of the Motor Vehicle Code. The department shall take the action authorized in this section only after hearing. Notice of hearing shall be given the party concerned as provided in Section 66-2-11 NMSA 1978. The notice shall state the proposed action of the department and the reason for the proposed action.

B. The department shall prepare rules for the conduct of the hearing. At the hearing, the technical rules of evidence do not apply, and a party has the right to be represented by counsel, to call witnesses in his own behalf and to cross-examine the witnesses of other parties.

C. The secretary or his designated agent shall conduct the hearing for the department and shall cause a record of hearing to be made.

D. Within ten days after completion of the hearing, the secretary shall cause to be served upon all parties, in the manner provided in Section 66-2-11 NMSA 1978, his findings and decision. The decision shall be:

(1) granting a license or refusing to grant a license;

(2) continuing a license, canceling a license or suspending a license for a time stated; or

(3) continuing use of dealer plates and temporary permits, canceling dealer plates and temporary permits or suspending use of temporary permits for a time stated.

E. A party aggrieved by the secretary's decision may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 79

Section 79. Section 66-5-36 NMSA 1978 (being Laws 1978, Chapter 35, Section 258) is amended to read:

"66-5-36. RIGHT OF APPEAL TO COURT.--A person denied a license or whose license has been canceled, suspended or revoked by the department, except when the cancellation or revocation is mandatory under the provisions of Chapter 66, Article 5 NMSA 1978, may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 80

Section 80. Section 66-5-204 NMSA 1978 (being Laws 1983, Chapter 318, Section 5, as amended) is amended to read:

"66-5-204. ADMINISTRATIVE AND COURT REVIEW.--An owner of a motor vehicle registered in New Mexico who is aggrieved by the decision of the secretary made under the provisions of the Mandatory Financial Responsibility Act may appeal to the hearing officer of the department for a hearing to be held within twenty days of the receipt by the department of the appeal. A person who continues aggrieved after the decision made by the hearing officer may appeal that decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 81

Section 81. Section 67-8-19 NMSA 1978 (being Laws 1959, Chapter 310, Section 5, as amended) is amended to read:

"67-8-19. PROCEDURE--APPEAL.--

A. All hearings held pursuant to this section shall be public and upon not less than fifteen days' written notice of the time, place and purpose of the hearing to each utility whose services or facilities may be affected and to each municipality in which any part of the proposed highway improvement is to be located. Hearings may be held before the commission, any member or any representative designated by it and at the place as is designated in the notice.

B. A record of the testimony shall be taken at the hearing and a transcript furnished to anyone upon request and payment of the cost.

C. The findings and orders shall be in writing and a copy served upon each party.

D. The commission may promulgate rules to govern its proceedings pursuant to this section.

E. A party aggrieved by an order may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 82

Section 82. Section 67-10-2 NMSA 1978 (being Laws 1891, Chapter 44, Section 2, as amended) is amended to read:

"67-10-2. RATES AND TOLLS--APPEALS.--A corporation may, after the completion of a wagon road or any part thereof and after the completion of a bridge or ferry for and by the traveling public, apply by petition in writing to the board of county commissioners of the county in or through which the road, bridge or ferry is or has been constructed, for rates, prices and tolls to be charged and collected from the traveling public using and traveling on the toll road, bridge or ferry, which petition shall state facts in reference to a road, bridge or ferry as will be sufficient to inform the board of county commissioners as to enable the board of county commissioners to fix the rates, tolls and charges, equal and just between the corporation owning the road, bridge or ferry and the traveling public using the same, and the rates, tolls and charges so fixed shall remain the same for two years. At the expiration of each two years, the corporation shall petition as aforesaid for the fixing of the rates, tolls and charges by the board of county commissioners. In case the corporation is dissatisfied with the rates, tolls and charges fixed by the board, it may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 83

Section 83. Section 67-13-12 NMSA 1978 (being Laws 1973, Chapter 17, Section 12, as amended) is amended to read:

"67-13-12. ZONING--PETITION FOR REVIEW--RESTRAINING ORDER.--

A. A person aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The appeal shall not stay the decision appealed from, but the court may, on application, grant a restraining order."

Chapter 265 Section 84

Section 84. Section 69-6-2 NMSA 1978 (being Laws 1933, Chapter 153, Section 308, as amended) is amended to read:

"69-6-2. RIGHT OF APPEAL.--Every owner, operator or employee of a mine has a right of appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 85

Section 85. Section 69-25A-30 NMSA 1978 (being Laws 1979, Chapter 291, Section 30) is amended to read:

"69-25A-30. JUDICIAL REVIEW.--

A. Any party to a proceeding before the commission who is aggrieved by a decision of the commission issued after a hearing may obtain a review of that decision, other than a promulgation of a regulation, by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Any person who is or may be aggrieved by any regulation, or any amendment or repeal of a regulation, adopted by the commission may appeal to the court of appeals for relief. All appeals shall be based upon the record made at the hearing before the commission and shall be filed with the court of appeals within thirty days after filing of the regulation under the State Rules Act. An appeal to the court of appeals under this subsection is perfected by the timely filing of a notice of appeal with the court of appeals with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that satisfactory arrangements have been made with the commission for preparation of transcripts of the record of the hearing at the expense of the appellant for filing with the court. Upon appeal, the court of appeals shall set aside the regulation only if determined to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) contrary to law; or

(3) unsupported by substantial evidence on the entire record as submitted."

Chapter 265 Section 86

Section 86. Section 69-36-16 NMSA 1978 (being Laws 1993, Chapter 315, Section 16, as amended) is amended to read:

"69-36-16. JUDICIAL REVIEW.--

A. A person who is or may be affected by a rule of the commission may appeal the action of the commission by filing a notice of appeal with the court of appeals within

thirty days from the filing date of the rule with the state records center. All appeals of rules shall be taken on the record made at the public hearing on the rule.

B. A party, intervenor or any other person upon a showing of good cause for not appearing at the public hearing on a rule may appeal a decision of the commission adopting, amending or repealing the rule by filing a written notice of appeal with the court of appeals within forty-five days after entry of the commission's decision. Copies of the notice of appeal shall be served at the time of filing, either personally or by certified mail, upon all parties to the proceeding before the commission.

C. A person who is or may be affected by a final action of the commission other than a rule may appeal the action of the commission by filing a notice of appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 87

Section 87. Section 70-2-25 NMSA 1978 (being Laws 1935, Chapter 72, Section 17, as amended) is amended to read:

"70-2-25. REHEARINGS--APPEALS.--

A. Within twenty days after entry of an order or decision of the commission, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within ten days after the application is filed, and failure to act on the application within that period shall be deemed a refusal and final disposition of that application. In the event the rehearing is granted, the commission may enter a new order or decision after rehearing as may be required under the circumstances.

B. A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 88

Section 88. Section 70-5-16 NMSA 1978 (being Laws 1973, Chapter 362, Section 16, as amended) is amended to read:

"70-5-16. APPEAL.--A licensee whose license is canceled or suspended by order of the commission may appeal the decision by filing an appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 89

Section 89. Section 70-5-17 NMSA 1978 (being Laws 1947, Chapter 214, Section 17, as amended) is amended to read:

"70-5-17. NO FORMAL NOTICE REQUIRED OF HEARING ON APPLICATION FOR LICENSE--APPEAL.--The same procedure, rights and penalties as specified in the LPG and CNG Act in the cases of revocation or suspension of licenses are available, where applicable, in cases where the bureau refused to grant a license, except that no formal notice of hearing on an application for license need be given an applicant, other than that he is given a reasonable opportunity to appear in support of his application before the bureau renders its order refusing him a license. Appeal shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 90

Section 90. Section 71-5-18 NMSA 1978 (being Laws 1975, Chapter 272, Section 18, as amended) is amended to read:

"71-5-18. REHEARINGS--APPEALS.--

A. Within twenty days after entry of an order or decision of the division, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within ten days after it is filed, and failure to act within the ten-day period shall be deemed a refusal of the application and a final disposition of the application. In the event the rehearing is granted, the commission may enter a new order or decision after rehearing as may be required under the circumstances.

B. A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of the proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party to the proceedings, stay or suspend in whole or in part operation of the order or decision pending review on terms as the court deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; provided that the court, as a condition to any staying or suspension of operation of any order or decision, may require that one or more parties secure, in a form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's or division's order or decision in the event that the action of the commission or division is affirmed."

Chapter 265 Section 91

Section 91. Section 73-11-29 NMSA 1978 (being Laws 1919, Chapter 20, Section 21, as amended) is amended to read:

"73-11-29. APPLICATION FOR WATER--BUDGET MEETING OF DIRECTORS--NOTICE OF MEETING--TAX ASSESSMENTS AND WATER CHARGES--EXEMPTIONS FROM TAX--APPEAL--SUCCESSION TO RIGHTS OF WATER USERS' ASSOCIATION.--

A. Every person desiring to receive water during the course of the year, at the time he applies for water, shall furnish the secretary of the board of directors of the irrigation district a statement in writing of the number of acres intended by him to be irrigated and a statement, as near as may be, of the crops planted or intended to be planted.

B. The board of directors, on a date to be fixed by a standing order of the board, which shall not be later than July 1 of each year, shall estimate and determine the amount of funds required to meet the obligations and needs of the district for the ensuing year, together with the additional amount as may be necessary to meet any deficiency in the payment of expenses or obligations previously incurred by the district and remaining unpaid, for any of the following purposes that may be required by the activities of the district:

(1) the payment of the interest upon bonds of the district and any installment on the principal of the bonds;

(2) any payment to become due under any contract with the United States, to secure which bonds have not been deposited with the United States, whether for the cost of irrigation or drainage system or for the operation and maintenance, or both; or if the lands of the district have been divided by the secretary of the interior into units, not necessarily contiguous, for repayment purposes the board shall prepare separate estimates for each unit;

(3) the portion of the expenses of operation and maintenance of the irrigation and drainage systems to be collected by tax assessment and levy, including funds required to meet obligations as provided in Section 73-11-49 NMSA 1978. This portion shall not be less than one-half of that portion required for the operation and maintenance costs for the ensuing year and shall be determined by the board of directors of the district from year to year. The portion of the operation and maintenance expenses collected by tax assessment and levy shall be collected from all lands of the district, whether irrigated or not, except those lands as may be exempted from taxation by the terms of Chapter 73, Articles 10 and 11 NMSA 1978, and the same, when collected, shall be applied to the cost of operating and maintaining the irrigation and drainage systems. The remainder of the estimated amount shall be paid by the parties actually using the systems and water for irrigation or other purposes in accordance with the terms of their contract for water; or

(4) current and miscellaneous expense fund requirements, other than as specified in this section, and necessary to defray the expenses of maintaining the organization of the district and carrying out the purposes of Chapter 73, Articles 10 and 11 NMSA 1978, shall be determined annually at a per acre rate by the board of directors. The amounts to be collected pursuant to this paragraph may, at the option of the board of directors of the district, be collected as tolls and charges in the manner provided in Section 73-11-28 NMSA 1978.

C. Lands that, in the opinion of the board of directors, are unfit for cultivation by irrigation on account of seepage, alkali or physical condition and location of the land, or other conditions, or lands to which the existing distributing system or its extensions cannot furnish water at such points of delivery as the board may consider reasonable, shall not be taxed for Paragraph (3) of Subsection B of this section, provided that tax shall not be assessed for Paragraph (3) of Subsection B of this section against land involved in the boundary suit now pending in the United States supreme court between the state of Texas and the state of New Mexico until the final determination of the suit, unless the land is in cultivation and using water for irrigation; and lands shall not be taxed for Paragraphs (1) and (2) of Subsection B of this section for the periods and to the extent that, on account of seepage or other conditions, in the opinion of the directors or the secretary of the interior, as may be provided by contract with the United States, or with district bondholders, such lands are not fit for cultivation by irrigation on account of those conditions; but nothing contained in this section shall be construed to relieve the district from making provision to raise the amount required to make full payment to private creditors or to the United States for the full cost of construction or of operation and maintenance, irrespective of the exemption of any lands from taxation, unless expressly provided by the assent of the bondholders or other private creditors or by agreement with the United States, as the case may be. In determining the amount required for the respective items aforesaid, the board shall take into consideration the gross amount of exemption and credits allowable pursuant to entries made by the board upon the assessor's certified list, as provided in Section

73-11-31 NMSA 1978. Proper entry shall be made by the district officers of all exemptions made and of credits allowed. The amount required to meet the obligations of the district, except that portion collected from tolls and charges, shall be raised by tax assessments, levy and collection, as provided in Chapter 73, Articles 10 and 11 NMSA 1978, to be extended pro rata per acre over all lands in the district or, in appropriate cases, under Paragraph (2) of Subsection B of this section, against all land in each respective unit of the district. When the board meets for the purposes prescribed, it shall consider, determine and designate the lands within the district that shall be subjected to those assessments and levies.

D. Notice of the time, place and purpose of the meeting shall be given by publication in English and Spanish in a newspaper of general circulation published within the county where the headquarters of the district are located and shall inform all the persons interested that, at the time and place specified, an opportunity will be afforded to appear before the board of directors and show cause why any particular tract of land, or any

portion of it, should be exempted from taxation under the provisions of Chapter 73, Articles 10 and 11 NMSA 1978. The notice shall be published once a week for four consecutive weeks, and the last publication shall be not less than three days prior to the date fixed for the meeting. Proof of publication shall be furnished by the publisher and shall be filed in the archives of the secretary of the district.

E. At the meeting, the board of directors, subject to reasonable rules as it may prescribe, shall afford to all persons desiring to do so an opportunity to make a showing as they may deem proper as to why any given tract of land or portion of it shall be exempted from taxation. In each case, the board of directors may make an investigation as it may deem proper, after which the board shall determine the question submitted, as right and justice may require, and shall cause its decision to be duly entered upon its minutes and a copy of it to be sent by registered mail to all parties who have made claim of exemption of land from taxation.

F. A person aggrieved by the decision may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

G. The filing of the appeal in the district court shall not stay the proceedings relating to the collection of the tax. In the event that the appellant has paid the tax before the rendition of final judgment in the suit and judgment is rendered in the suit in favor of the appellant, the appellant shall have refunded to him a sum of money as shall be determined by the judgment of the court, together with legal interest on it and costs of court. If the appellant fails to recover in the suit, the appellant shall pay all costs of court. In case the assets and liabilities of any water users' association are taken over as provided in Section 73-10-1 NMSA 1978, the board of directors shall allow to the owner of lands, on account of which payment has been made to the association, all proper and equitable credits to which the owner may be entitled, according to the books and records of the association, which shall be prima facie evidence of the credits of its various members. The credits shall be taken into consideration by the board of directors in determining the amount of money required to meet obligations, maintenance, operating and current expenses of the district for the ensuing year, and the board of directors shall certify to the county commissioners the amount of the credits, and levy as provided for in Chapter 73, Articles 10 and 11 NMSA 1978 shall be made accordingly.

H. The term "asset" as used in this section includes any and all grants, rights, powers, privileges and appropriations conferred by law and upon any water users' association and upon taking over the assets of any water users' association as provided in Chapter 73, Articles 10 and 11 NMSA 1978 by any irrigation district. The district shall succeed to all such grants, rights, powers, privileges and appropriations, and the officers of the irrigation district are authorized and empowered to perform such duties and execute such instruments in regard thereto as the law required of the officers of the water users' association."

Chapter 265 Section 92

Section 92. Section 73-12-4 NMSA 1978 (being Laws 1929, Chapter 76, Section 4, as amended) is amended to read:

"73-12-4. PETITION HEARING--OBJECTIONS--BOUNDARIES--ELECTION--APPEALS.--

A. At the hearing before the board of county commissioners provided for in Section 73-12-3 NMSA 1978, the board shall proceed to determine whether the petition has been signed by the requisite number of petitioners; whether the lands in the proposed district are arid or semiarid lands; whether the lands are susceptible to irrigation and have a fertile soil that will warrant farming them by irrigation; whether there is a supply of water that can be made efficiently available for irrigation by the use of pumps; whether the proposed plan is practicable; and whether, on the whole, the development said to result from the introduction of power is of such interest and benefit to the whole district as to impress it with the character of public use. For the purpose of determining the public use of the operations of the proposed district and all other of the foregoing questions, the board of county commissioners is established as an inferior court and its decisions shall be binding upon all persons interested unless reversed on appeal as provided in this section, and if modified or affirmed, it shall be so binding.

B. If the board of county commissioners hearing the matter determines that the petition has been signed by the requisite number of petitioners as required by Chapter 73, Article 12 NMSA 1978 and determines that the proposed development is of such interest and benefit to the whole district as to impress with the character of public use, it shall then proceed to hear any objections, exceptions and protests that have been made in writing to the organization of the district or to the inclusion of any lands within the district or to the exclusion of lands from the district and other objections, exceptions and protests as may be presented in writing to the organization of the district. All persons whose lands have not been included in the proposed district, as defined in the petition, have the right to appear before the board at the time and place as parties interested in or affected by the organization of the district and have the right to petition that their lands be included within the district, and, if it appears to the board that the inclusion of such lands may be made without materially increasing the cost of service, the commissioners may by order include such lands within the district.

C. If the board makes findings approving of the organization of the district, it shall then proceed to define the boundaries of the proposed district from the petition and from applications in writing for the exclusion of lands and the inclusion of lands from and in the district, as may be made in accordance with the intent of Chapter 73, Article 12 NMSA 1978. The board may adjourn the meeting from time to time not exceeding three weeks in all and shall, by final order duly entered upon its records, allow the prayer of the petition and define and establish the boundaries of the proposed district. Provided that the board shall not modify the proposed boundaries described in the petition so as to change the objects of the petition or so as to exempt from the operation of Chapter 73, Article 12 NMSA 1978 any land within the boundaries proposed by the petition susceptible to irrigation by the same system or power works applicable to other lands in

the proposed district. No land that will not, in the judgment of the board, be benefited by the proposed system shall be included in the district if its owner makes written application at the hearing to withdraw it.

D. Any persons aggrieved by the decision of the board of county commissioners, upon the hearing provided for in this section, are given the right of appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. When the petition has been allowed and the boundaries established and the name of the proposed district designated, which shall be ____________________ electrical district, the board of county commissioners shall, by further order duly entered upon its records, call an election of the qualified electors of the district to be held for the purpose of determining whether the district shall be organized under the provisions of Chapter 73, Article 12 NMSA 1978 and by such order shall submit the names of one or more persons from each of three divisions of the district, as provided in this section, to be voted for as directors therein, and for the purpose of the election shall divide the district into three divisions, as nearly equal in size as may be practicable, to be numbered, respectively, 1, 2 and 3 and shall provide that a qualified elector of each of the three divisions shall be elected as a member of the board of directors of the district by the qualified electors of the whole district. Each of the divisions shall constitute an election precinct and the commissioners shall appoint three judges for each of the precincts, one of whom shall act as clerk of the election."

Chapter 265 Section 93

Section 93. Section 74-3-9 NMSA 1978 (being Laws 1971, Chapter 284, Section 7, as amended) is amended to read:

"74-3-9. LICENSING OF RADIOACTIVE MATERIAL--APPEAL.--

A. It is unlawful for any person to possess, use, store, dispose of, manufacture, process, repair or alter any radioactive material unless he holds:

(1) a license issued by the nuclear regulatory commission and notification by the licensee to the agency of license identification;

(2) a license issued by an agreement state and notification by the licensee to the agency of license identification; or

(3) a license issued by the agency.

B. The agency shall issue licenses and shall approve requests for reciprocity in accordance with procedures prescribed by rule of the board. License applications shall be made on forms provided by the agency. The agency shall not issue a license unless the applicant has demonstrated the capability of complying with all applicable rules of the board.

C. The board may, by rule, exempt from the requirements of licensure specific quantities of any radioactive material determined by the board not to constitute a health or environmental hazard.

D. The holding of a license issued by the agency, the nuclear regulatory commission or an agreement state does not relieve the licensee from the responsibility of complying with all applicable rules of the board.

E. A person who is or may be affected by licensing action of the agency may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 94

Section 94. Section 74-4B-14 NMSA 1978 (being Laws 1992, Chapter 5, Section 3, as amended) is amended to read:

"74-4B-14. CLEANUP OF ORPHAN HAZARDOUS MATERIALS--

DEPARTMENT RECOURSE--APPEAL.--The department may assess charges against a party identified as responsible for orphan hazardous materials, for costs the department incurs in cleanup of the orphan hazardous materials and for damage to state property. Amounts received in payment of assessments for cleanup of the orphan hazardous materials shall be deposited in the orphan material recovery fund. Amounts received in payment of assessments for damage to state property shall be used to repair the damage. A person who is assessed charges pursuant to this section may appeal the assessment to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 95

Section 95. Section 75-3-11 NMSA 1978 (being Laws 1965, Chapter 235, Section 11, as amended) is amended to read:

"75-3-11. JUDICIAL REVIEW.--Rulings by the commission on the issuance, refusal or revocation of a license are subject to review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 265 Section 96

Section 96. REPEAL.--Sections 19-7-68 and 19-7-69 NMSA 1978 (being Laws 1912, Chapter 82, Sections 73 and 74, as amended) are repealed.

Chapter 265 Section 97

Section 97. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 356, AS AMENDED

CHAPTER 266

RELATING TO PUBLIC AFFAIRS; ADOPTING THE STATE NICKNAME.

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

Chapter 266 Section 1

Section 1. Section 12-3-4 NMSA 1978 (being Laws 1927, Chapter 102, Section 1, as amended by Laws 1989, Chapter 8, Section 1 and also by Laws 1989, Chapter 154, 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 NICKNAME.--

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

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

HOUSE BILL 633

CHAPTER 267

RELATING TO ELECTIONS; EXPANDING THE ABSENT VOTER ACT; REPEALING THE ABSENTEE-EARLY VOTING ACT; CLARIFYING FILING REQUIREMENTS AND NOMINATING PETITION REQUIREMENTS; REPEALING AND ENACTING SECTIONS OF THE ELECTION CODE.

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

Chapter 267 Section 1

Section 1. A new section of the Absent Voter Act is enacted to read:

"PREPARATION OF ELECTRONIC VOTING MACHINES.--

A. Five days before an electronic voting machine is issued for absentee voting as provided in Section 1-6-9.1 NMSA 1978, the county clerk may begin to prepare, inspect and seal the voting machine in accordance with the specifications for electronic voting machines adopted by the secretary of state.

B. One day before any electronic voting machine is used for absentee voting, the county clerk shall certify to the secretary of state and all county party chairmen the type and serial number of each voting machine to be used."

Chapter 267 Section 2

Section 2. A new section of the Absent Voter Act is enacted to read:

"SECRETARY OF STATE--EMERGENCY AUTHORITY.--The secretary of state shall have emergency authority to prescribe by regulation procedures to accommodate the special absentee ballot requirements brought on by activation of the New Mexico national guard and reserve units or for individuals who are overseas voters, and procedures for a special write-in absentee ballot available at least ninety days prior to an election to cover candidates for federal offices."

Chapter 267 Section 3

Section 3. A new section of the Absent Voter Act is enacted to read:

"SECURITY--COUNTING AND CANVASSING.--The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots, including procedures specifying that machines and ballot containers remain locked and that ballots not be removed prior to election day; procedures for voting by absentee ballot; separation of absentee ballots voted on electronic voting machines twenty days before the election from those received through the mail; disposition of absentee ballots rejected by a voting machine; handling of, counting and canvassing of absentee ballots; and sorting of absentee ballots by representative district for canvassing purposes."

Chapter 267 Section 4

Section 4. Section 1-6-2 NMSA 1978 (being Laws 1987, Chapter 327, Section 6, as amended) is amended to read:

"1-6-2. DEFINITIONS.--As used in the Absent Voter Act:

A. "absent uniformed services voter" means:

(1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member referred to in Paragraphs (1) and (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "election" means a statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections;

C. "electronic ballot" means a paper ballot or ballot face designed to be used on an electronic voting machine to cast votes;

D. "electronic voting machine" means a computer-controlled machine designed to electronically record and tabulate votes cast;

E. "federal office" means the office of president, vice president or senator or representative in congress;

F. "federal qualified elector" means:

(1) an absent uniformed services voter; or

(2) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

G. "member of the merchant marine" means an individual other than a member of a uniformed service or an individual employed, enrolled or maintained on the Great Lakes or the inland waterways who:

(1) is employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of a foreign-flag registry under charter to or control of the United States; or

(2) is enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel;

H. "overseas voter" means:

(1) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(2) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States; and

I. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration."

Chapter 267 Section 5

Section 5. Section 1-6-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 129, as amended by Laws 1993, Chapter 19, Section 1 and also by Laws 1993, Chapter 21, Section 1) is amended to read:

"1-6-3. RIGHT TO VOTE BY ABSENTEE BALLOT.--

A. Any voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot as if he were able to cast his ballot in person at his regular polling place on election day.

B. Any federal qualified elector may register absentee and vote by an absentee ballot for any federal office."

Chapter 267 Section 6

Section 6. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed, printed and furnished by the secretary of state to the county clerk of the county in which the voter resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act; provided that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

C. Each application for an absentee ballot shall be subscribed by the applicant."

Chapter 267 Section 7

Section 7. Section 1-6-4.1 NMSA 1978 (being Laws 1987, Chapter 327, Section 9) is amended to read:

"1-6-4.1. FEDERAL WRITE-IN ABSENTEE BALLOT FOR OVERSEAS VOTERS IN GENERAL ELECTIONS FOR FEDERAL OFFICES.--

A. Except as provided in Subsection C of this section, a federal write-in absentee ballot for federal offices in a general election shall be processed in the same manner as provided by law for other absentee ballots.

B. In completing the ballot, the overseas voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for all candidates of that political party for federal office. Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot if the intention of the overseas voter can be ascertained.

C. A federal write-in absentee ballot of an overseas voter shall not be counted if:

(1) the ballot is submitted from any location in the United States;

(2) the application of the overseas voter for an absentee ballot is received by the county clerk less than thirty days before the election; or

(3) the absentee ballot of the overseas voter is received by the county clerk later than 7:00 p.m. on election day."

Chapter 267 Section 8

Section 8. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended by Laws 1993, Chapter 314, Section 43 and also by Laws 1993, Chapter 316, Section 43) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--MARKING AND DELIVERY OF BALLOT IN PERSON.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the county clerk finds that the applicant is a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. No absent voter shall be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the voter leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or

other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's choice.

F. Commencing with the twentieth day prior to an election, an absent voter may vote in person at the county clerk's office or on an electronic voting machine at an alternate location established by the county clerk. In class A counties, the county clerk shall establish not less than four alternate locations as a convenience to the voters. Absentee voting may be done at the county clerk's office or an alternate location during the regular hours of business from 8:00 a.m. on the twentieth day prior to the election until 5:00 p.m. on Thursday immediately prior to the election. The county clerk shall ensure that procedures established for processing an absent voter application and for voting by absentee ballot are complied with at each alternative location.

G. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

H. No absentee ballot shall be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

I. The county clerk shall accept and process with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act.

J. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting."

Chapter 267 Section 9

Section 9. Section 1-6-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 132, as amended) is amended to read:

"1-6-6. ABSENTEE BALLOT REGISTER.--

A. For each election, the county clerk shall keep an "absentee ballot register", in which he shall enter:

(1) the name and address of each absentee ballot applicant;

(2) the date and time of receipt of the application;

(3) whether the application was accepted or rejected;

(4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;

(5) the applicant's precinct;

(6) whether the applicant is a voter, a federal voter, a federal qualified elector or an overseas citizen voter; and

(7) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted in the county clerk's office or at an alternate location.

B. Within twenty-four hours after receipt of a voter's application for an absentee ballot, the county clerk shall mail either the ballot or a notice of rejection to the applicant.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours.

D. The county clerk shall deliver to the absent voter precinct on election day a complete list of all absentee ballot applicants with applicable information shown in the absentee ballot register for each applicant up to 5:00 p.m. on the Thursday preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. The county clerk shall transmit to the secretary of state and to the county chairman of each of the major political parties in the county a complete copy of entries made in the absentee ballot register. Such transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Friday immediately following the election."

Chapter 267 Section 10

Section 10. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 133, as amended) is amended to read:

"1-6-7. FORM OF ABSENTEE BALLOT.--As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballots shall be numbered and shall be, as nearly as possible, in the same form as prescribed by the secretary of state for emergency ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as possible. Absentee ballots shall be printed at least forty days prior

to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election."

Chapter 267 Section 11

Section 11. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. ABSENTEE BALLOT ENVELOPES.--

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk; provided the official mailing envelope for absentee ballots in a general election shall contain no designation of party affiliation;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the county clerk in mailing absentee ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in red in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the voter completing the absentee ballot. The form shall identify the voter and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Chapter 267 Section 12

Section 12. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING.--

A. Any person voting pursuant to the Absent Voter Act shall secretly mark his absentee ballot in the manner provided in the Election Code for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true.

B. Federal qualified electors shall either deliver or mail the official mailing envelope to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence."

Chapter 267 Section 13

Section 13. Section 1-6-9.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 13, as amended) is amended to read:

"1-6-9.1. VOTING BY ELECTRONIC BALLOT.-- An absent voter voting on an electronic ballot shall secretly mark the ballot in accordance with the instructions on that ballot, and the vote cast shall be recorded on an electronic voting machine."

Chapter 267 Section 14

Section 14. 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, except as provided in Subsection H of Section 1-6-14 NMSA 1978, until it is delivered on election day to the proper absent voter precinct board or until it is canceled and destroyed in accordance with law.

B. The county clerk shall accept completed official mailing envelopes until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to a precinct board but shall be preserved by the county clerk until the time for election contests has expired. In the absence of a restraining order after expiration of the time for election contests, the county clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the county clerk shall count the numbers of late ballots from voters, federal voters, overseas citizen voters and federal qualified electors and report the number from each category to the secretary of state.

C. At 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. The county clerk shall execute a certificate of destruction, which shall include the numbers on the absentee ballots destroyed. A copy of the certificate of destruction shall be sent to the secretary of state."

Chapter 267 Section 15

Section 15. Section 1-6-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 137, as amended) is amended to read:

"1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCTS.--

A. On election day, the county clerk shall deliver the absentee ballots received prior to 7:00 p.m. on election day to the special deputy county clerks for delivery to the absent voter precinct boards. The absentee ballots for each absent voter precinct shall be separately wrapped, and the special deputy county clerk shall issue a receipt for all ballots delivered for the county clerk. Upon delivery of the absentee ballots to the absent voter precinct board, the special deputy county clerk shall remain in the polling place of the absent voter precinct until he has observed the opening of the official mailing envelope, the deposit of the ballot in the locked ballot box and the listing of the names on the official mailing envelope in the signature rosters. Upon such delivery of absentee ballots, the special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge and he shall return such receipt to the county clerk for filing. The receipts shall specify the number of envelopes received by the special deputy county clerk from the county clerk for each absent voter precinct and the number of envelopes received by the absent voter precinct board from the special deputy county clerk.

B. At 7:00 a.m. on election day, the county clerk shall deliver the electronic voting machines used for absentee voting to the absent voter precinct board. The machines shall not be used to vote on or count additional ballots for that election. A special deputy county clerk shall issue a receipt for each voting machine. Upon delivery of a voting machine, the special deputy shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number and the seal number of the machine and shall verify the public counter number on the machine, and he shall return the receipt to the county clerk for filing."

Chapter 267 Section 16

Section 16. 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 any official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. The accredited challengers may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas citizen voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelopes have been properly subscribed and the voters have not been challenged:

(1) the election judges shall open the official mailing envelopes and deposit the ballots in their still-sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall 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.

E. Prior to the closing of the polls, the election judges and the presiding election judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding election judge and one election judge from each party, count and tally the absentee ballots on an electronic voting machine the same as if the absent voter had been present and voted in person. It is unlawful for any person to disclose the results of a

count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state.

H. The county clerk may convene the absent voter precinct board no more than three days before the day of the election to alphabetize, enter on the roster and sort the absentee ballots by legislative district; provided that no member of the absent voter precinct board shall open an official mailing envelope or count and canvass any absentee ballot prior to the day of the election."

Chapter 267 Section 17

Section 17. Section 1-6-15 NMSA 1978 (being Laws 1977, Chapter 222, Section 13, as amended) is amended to read:

"1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION.-- If voting machines are not used to register absentee ballots, the absentee ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code for the canvassing, recounting and disposition of emergency paper ballots. If voting machines are used to register absentee ballots, the ballots shall be canvassed and rechecked in the manner provided by the Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked but the absentee ballots shall be recounted in the manner provided by the Election Code for the recounting of emergency paper ballots. As used in this section, "voting machines" means electronic voting machines as provided in the Election Code."

Chapter 267 Section 18

Section 18. Section 1-6-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 141, as amended by Laws 1989, Chapter 368, Section 2 and also by Laws 1989, Chapter 392, Section 15) is amended to read:

"1-6-16. VOTING IN PERSON PROHIBITED.--

A. Except as provided in Section 1-6-16.1 NMSA 1978, no person who has been issued an absentee ballot shall vote in person at his precinct poll.

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 of the county where he is registered to vote, a sworn affidavit stating that he did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. 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 267 Section 19

Section 19. Section 1-6-16.1 NMSA 1978 (being Laws 1989, Chapter 368, Section 1, as amended) is amended to read:

"1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

A. A voter who applies for an absentee ballot but has not received the absentee ballot by mail as of the date of the election may present himself at his assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on an emergency paper ballot.

B. The completed ballot shall be placed in an official inner envelope substantially as prescribed by Section 1-6-8 NMSA 1978 and sealed. The official inner envelope shall then be placed in an official envelope substantially as prescribed for a transmittal envelope or mailing envelope in Section 1-6-8 NMSA 1978. This envelope shall contain a form on its back that identifies the voter by name and signature roster number and a printed statement to the effect that the voter made application for an absentee ballot but had not received it as of the date of the election and is permitted to vote by emergency paper ballot.

C. The presiding election judge shall put all absentee ballots in a special envelope provided for that purpose by the county clerk, seal it and return it to the county clerk along with the machine tally sheets. The sealed envelope shall not be put in the locked ballot box.

D. Upon receipt of the envelope containing absentee ballots, the county clerk, no later than forty-eight hours after the close of the election, shall remove the transmittal envelopes and, without removing or opening the inner envelopes, determine that:

(1) if a voter did in fact make application for an absentee ballot; and

(2) if an absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.

E. Upon making that determination, the county clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and

place the inner unopened envelope in a secure container to be transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

F. The secretary of state shall prescribe and furnish the necessary envelopes for purposes of this section and shall adopt rules and regulations deemed necessary to preserve the secrecy of the emergency paper ballots."

Chapter 267 Section 20

Section 20. Section 1-6-16.2 NMSA 1978 (being Laws 1993, Chapter 353, Section 1) is amended to read:

"1-6-16.2. ADDITIONAL EMERGENCY PROCEDURE FOR VOTING.--

A. After the close of the period for requesting absentee ballots by mail, any voter who is unable to go to the polls due to unforeseen illness or disability resulting in his confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote at his regular polling place or alternate location may request in writing that an alternative ballot be made available to him. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The alternative ballot shall be made available by the clerk of the county in which the voter resides to any authorized representative of the voter who through his representative has presented the written request to the office of the clerk.

C. Before releasing the alternative ballot, the county clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the county clerk determines that the signature on the written request is not the signature of the voter, he shall reject the request for an alternative ballot.

D. The voter shall mark the alternative ballot, place it in an identification envelope similar to that used for absentee ballots, fill out and sign the envelope and return the ballot to the office of the clerk of the county in which the voter resides no later than the time of closing of the polls on election day. The voter's name shall be compared to the roster of voters and the ballot shall only be counted if there is no signature for that voter on the roster of the precinct where that voter's name appears.

E. Alternative ballots shall be processed and counted in the same manner as absentee ballots.

F. The secretary of state shall prescribe the form of alternative ballots and shall distribute an appropriate number of alternative ballots to each county clerk."

Chapter 267 Section 21

Section 21. Section 1-6-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 142) is amended to read:

"1-6-17. CANCELLATION OF ABSENTEE BALLOT AT DEATH.--If any person voting under the provisions of the Absent Voter Act dies after mailing or delivering his absentee ballot to the county clerk but before the absentee ballot is counted, the official outer envelope shall be marked "canceled by the precinct board" and preserved by the county clerk in the same manner as provided for other uncast ballots in Subsection B of Section 1-6-10 NMSA 1978."

Chapter 267 Section 22

Section 22. Section 1-6-21 NMSA 1978 (being Laws 1975, Chapter 255, Section 93, as amended) is amended to read:

"1-6-21. CONSOLIDATION OF ABSENT VOTER PRECINCTS.--Absent voter precincts may be consolidated by the governing authority if it deems it desirable and so directs by resolution."

Chapter 267 Section 23

Section 23. Section 1-6-23 NMSA 1978 (being Laws 1975, Chapter 255, Section 95, as amended) is amended to read:

"1-6-23. ABSENT VOTER PRECINCT POLLING PLACE--HOURS ON ELECTION DAY AND SUBSEQUENT DAYS.--The county clerk or statutorily appointed supervisor of the election shall determine the hours during which the absent voter precinct polling place shall be open for delivery and counting of ballots on election day and subsequent days until all ballots are counted."

Chapter 267 Section 24

Section 24. Section 1-6-24 NMSA 1978 (being Laws 1969, Chapter 54, Section 5, as amended) is amended to read:

"1-6-24. ABSENT VOTER PRECINCT BOARD APPOINTMENT.--

A. The county clerk of each county shall appoint absent voter precinct board members and their respective alternates for each absent voter precinct and shall compensate them at an hourly rate set by the county clerk.

B. A minimum of three precinct board members shall be appointed to the absent voter precinct board with no more than two members belonging to the same political party."

Chapter 267 Section 25

Section 25. Section 1-8-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 162, as amended) is amended to read:

"1-8-13. PRIMARY ELECTION LAW--CONTENTS OF

PROCLAMATION.--The proclamation calling a primary election shall contain:

A. the names of the major political parties participating in the primary election;

B. the offices for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and the law does not take effect until after the date of the proclamation but prior to the date of the primary election, the proclamation shall conform to the intent of the law with respect to the offices for which each political party shall nominate candidates;

C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education, public regulation commission or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;

D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;

E. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking preprimary convention designation by the major parties shall file petitions and declarations of candidacy;

F. the final date on which the major political parties shall hold state preprimary conventions for the designation of candidates; and

G. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state.

As used in the Primary Election Law, "statewide office" means any office voted on by all the voters of the state."

Chapter 267 Section 26

Section 26. 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 fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION

I, the undersigned, a registered voter of the county of _______________, New Mexico, and a member of the _______________ party, hereby nominate ____________________, who resides at __________________ in the county of ________________, New Mexico, for the party nomination for the office of _________________________, to be voted for at the primary election to be held on the first Tuesday of June, 19 _____, and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. _____________ _______________ ______________ __________

(usual (name printed (address as (city or

signature) as registered) registered) rt. no.)

2. _____________ _______________ ______________ __________

(usual (name printed (address as (city or

signature) as registered) registered) rt. no.).".

D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening."

Chapter 267 Section 27

Section 27. Section 1-8-31 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended by Laws 1993, Chapter 314, Section 47 and also by Laws 1993, Chapter 316, Section 47) 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 his residence as his address. If the person does not have a residential address, he may provide his mailing address.

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 sufficient to determine that the person is a qualified voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(3) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(4) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(5) is not the person whose name appears on the nominating petition.

D. The 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 (4) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties."

Chapter 267 Section 28

Section 28. 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."

Chapter 267 Section 29

Section 29. Section 1-8-49 NMSA 1978 (being Laws 1977, Chapter 322, Section 5) is amended to read:

"1-8-49. INDEPENDENT CANDIDATES FOR GENERAL ELECTIONS--CANDIDATES FOR PRESIDENT AND VICE PRESIDENT.--

A. Nomination as an independent candidate for president or vice president shall be made by filing a declaration of independent candidacy with the proper filing officer. The candidate for president shall also at the same time file a nominating petition with the required number of signatures.

B. In making a declaration of independent candidacy for president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR PRESIDENT

I, ________________ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I desire to become a candidate for the office of president of the United States at the general election to be held on the date set by law for this year. I will be eligible and legally qualified to hold this office at the beginning of its term.

The name of my vice presidential running mate, whom I selected, is ____________________. The names and addresses of the required number of presidential electors who intend to vote for me and for my vice presidential running mate in the electoral college are:

________________________	________________________
(name)	(name)
________________________	________________________
(residence address)	(residence address)
________________________	________________________
(mailing address)	(mailing address)
________________________	________________________
(city)	(city)

____

(state and zip code)

____

(name)

____

(residence address)

____

(mailing address)

____

(city)

____

(state and zip code)

____

(name)

____

(residence address)

____

(mailing address)

____

(city)

____

(state and zip code)

____

(state and zip code)

____

(name)

____

(residence address)

____

(mailing address)

____

(city)

____

(state and zip code)

I submit with this statement a nominating petition in the form and manner prescribed by the Election Code. I make the foregoing affidavit under oath, knowing that any false

statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

____

(declarant)

____

(residence address)

____

(mailing address)

____

(city)

____

(state and zip code)

Subscribed and sworn to me this ____________________ day of ____________,_______ (year)

____

notary public

My commission expires:

__________________________".

C. In making a declaration of independent candidacy for vice president, the candidate shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY FOR VICE PRESIDENT

I, ____________ (candidate's name), being duly sworn, say that I am a citizen of the United States, have been a resident of the United States for at least fourteen years and have attained the age of thirty-five.

I have been selected by independent presidential candidate ______________ as his vice presidential running mate and desire to be that candidate for vice president. I will be eligible and legally qualified to hold this office at the beginning of its term.

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable in accordance with the criminal laws of New Mexico.

____

(declarant)

____

(residence address)

____

(mailing address)

____

(city)

____

(state and zip code)

Subscribed and sworn to me this _____________ day of _______,________ (year)

____

(notary public)

My commission expires:

____________________".

D. The independent presidential electors whom the independent candidate for president is required to name shall be registered voters of New Mexico; they may or may not be affiliated with a political party in New Mexico. United States senators, United States representatives and persons holding federal offices of trust or profit are not eligible to be electors.

E. When independent candidates for president and vice president appear on the general election ballot, a vote for that pair of nominees is a vote for that presidential candidate's electors.

F. If the independent candidates for president and vice president receive the highest number of votes at the general election, the independent presidential candidate's electors shall be the presidential electors of the state of New Mexico. As such, each elector shall be granted a certificate of election by the state canvassing board, and each elector shall be subject to the provisions of Sections

1-15-5 through 1-15-10 NMSA 1978."

Chapter 267 Section 30

Section 30. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter 322, Section 6) is amended to read:

"1-8-50. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITION FORM.--

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become an independent candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. In making a determination of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY

FOR ANY OFFICE EXCEPT PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the county of ____________________, New Mexico, hereby nominate ____________________________________, who resides at

_________________________ in the county of _______________, New Mexico, as an independent candidate for the office of _________________________, to be voted for at the general election, or United States representative special election to be held on _____________________ ,_________ (month) (day) (year) and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill the office at the next ensuing general election or at a United States representative special election.

1. ______________ _______________ _____________ __________

(usual (name printed (address as (city)

signature) as registered) registered)

2. _____________ _______________ ______________ __________

(usual (name printed (address as (city)."

signature) as registered) registered)

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY

FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of the county of __________, New Mexico, by endorsement hereon, petition that the name of ____________ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November _________,_____ . I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election.".

E. The secretary of state shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening."

Chapter 267 Section 31

Section 31. Section 1-12-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 246, as amended by Laws 1993, Chapter 314, Section 54 and also by Laws 1993, Chapter 316, Section 54) is amended to read:

"1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE.--

A. No person shall vote in any primary, general or statewide special election unless he is a voter of the precinct in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration.

C. No person at any primary election shall be permitted to vote for the candidate of any party other than the party designated on his current certificate of registration."

Chapter 267 Section 32

Section 32. Section 1-15-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 373) is amended to read:

"1-15-23. EXPIRING TERM AND SUCCEEDING TERM.--If the same individual is a candidate at a general election for both the expiring term and the succeeding term, his name shall appear but once on the ballot, and the name of the office, followed by the words, "full and expiring terms"."

Chapter 267 Section 33

Section 33. Section 1-22-2 NMSA 1978 (being Laws 1985, Chapter 168, Section 4, as amended) is amended to read:

"1-22-2. DEFINITIONS.--As used in the School Election Law:

A. "board" means the governing authority of the local school district;

B. "county clerk" means the clerk of each county in which the school district is situate;

C. "proper filing officer" means the county clerk or, in the case of a multicounty school district, the clerk of the county in which the administrative office of the school district is situate;

D. "magistrate" means the magistrate whose office is situated in the municipality where the administrative office of the school district is located or in close proximity to the municipality;

E. "school district election" means a regular or special school district election but does not include a recall election; and

F. "superintendent" means the superintendent of schools of the local school district."

Chapter 267 Section 34

Section 34. Section 1-22-7 NMSA 1978 (being Laws 1985, Chapter 168, Section 9) is amended to read:

"1-22-7. DECLARATION OF CANDIDACY--FILING DATE--PENALTY.--

A. A candidate for a school board position that will be filled at a regular school district election shall file a declaration of candidacy with the proper filing officer during the period commencing at 9:00 a.m. on the third Tuesday in December of the even-numbered year immediately preceding the date of the regular school district election and ending at 5:00 p.m. on the same day.

B. A candidate for a school board position that will be filled at a special school district election shall file a declaration of candidacy with the proper filing officer during the period commencing at 9:00 a.m. on the forty-eighth day before the election and ending at 5:00 p.m. on the same day.

C. A candidate shall file for only one school board position during a filing period.

D. Whoever knowingly makes a false statement in his declaration of candidacy is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Chapter 267 Section 35

Section 35. Section 1-22-19 NMSA 1978 (being Laws 1985, Chapter 168, Section 21, as amended) is amended to read:

"1-22-19. ABSENTEE VOTING.--

A. A voter may vote in a school district election by absentee ballot for all candidates and on all questions appearing on the ballot in his precinct as if he were casting his ballot in person at the polling place on election day.

B. The provisions of the Absent Voter Act of the Election Code apply to absentee voting in school district elections, provided that absentee ballots may be marked in person

during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the twenty-fifth day preceding the election until 5:00 p.m. on the Friday immediately prior to the date of the election. Absentee ballots shall be printed at least thirty days prior to the date of the election. Provisions may be made by the board in the proclamation for absentee voting by electronic voting machine from 8:00 a.m. on the twentieth day preceding an election until 5:00 p.m. on the Friday immediately prior to the date of the election.

C. A regular precinct board may be designated to serve as the absent voter precinct board. A member of the absent voter precinct board shall receive the same compensation as a regular precinct board member. A regular precinct board member who also serves as a member of the absent voter precinct board shall not be entitled to extra compensation for serving on the absent voter precinct board."

Chapter 267 Section 36

Section 36. REPEAL.--Sections 1-6-5.2 and 1-6A-1 through 1-6A-12 NMSA 1978 (being Laws 1991, Chapter 105, Section 11, Laws 1993, Chapter 37, Sections 1 through 9, Chapter 165, Sections 4 through 6, as amended) are repealed.

HOUSE BILL 650, AS AMENDED

CHAPTER 268

RELATING TO GOVERNMENTAL IMMUNITY; PROVIDING GOVERNMENTAL IMMUNITY FROM CIVIL LIABILITY FOR CLAIMS ARISING FROM FAILURE OF CERTAIN EQUIPMENT TO ACCURATELY PROCESS DATES OR TIMES.

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

Chapter 268 Section 1

Section 1. Section 41-4-4 NMSA 1978 (being Laws 1976, Chapter 58, Section 4, as amended) is amended to read:

"41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--AUTHORIZING EXCEPTIONS.--

A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as waived by Sections

41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity shall be limited to and governed by the provisions of Sections 41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity provided in those sections does not waive immunity granted pursuant to the Governmental Immunity Act.

B. Unless an insurance carrier provides a defense, a governmental entity shall provide a defense, including costs and attorneys' fees, for any public employee when liability is sought for:

(1) any tort alleged to have been committed by the public employee while acting within the scope of his duty; or

(2) any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the public employee while acting within the scope of his duty.

C. A governmental entity shall pay any award for punitive or exemplary damages awarded against a public employee under the substantive law of a jurisdiction other than New Mexico, including but not limited to other states, territories and possessions and the United States of America, if the public employee was acting within the scope of his duty.

D. A governmental entity shall pay any settlement or any final judgment entered against a public employee for:

(1) any tort that was committed by the public employee while acting within the scope of his duty; or

(2) a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico that occurred while the public employee was acting within the scope of his duty.

E. A governmental entity shall have the right to recover from a public employee the amount expended by the public entity to provide a defense and pay a settlement agreed to by the public employee or to pay a final judgment if it is shown that, while acting within the scope of his duty, the public employee acted fraudulently or with actual intentional malice causing the bodily injury, wrongful death or property damage resulting in the settlement or final judgment.

F. Nothing in Subsections B, C and D of this section shall be construed as a waiver of the immunity from liability granted by Subsection A of this section or as a waiver of the state's immunity from suit in federal court under the eleventh amendment to the United States constitution.

G. The duty to defend as provided in Subsection B of this section shall continue after employment with the governmental entity has been terminated if the occurrence for which damages are sought happened while the public employee was acting within the scope of duty while the public employee was in the employ of the governmental entity.

H. The duty to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for which liability has been imposed happened while the public employee was acting within the scope of his duty while in the employ of the governmental entity.

I. A jointly operated public school, community center or athletic facility that is used or maintained pursuant to a joint powers agreement shall be deemed to be used or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 NMSA 1978.

J. For purposes of this section, a "jointly operated public school, community center or athletic facility" includes a school, school yard, school ground, school building, gymnasium, athletic field, building, community center or sports complex that is owned or leased by a governmental entity and operated or used jointly or in conjunction with another governmental entity for operations, events or programs that include sports or athletic events or activities, child-care or youth programs, after-school or before-school activities or summer or vacation programs at the facility."

Chapter 268 Section 2

Section 2. SHORT TITLE.--Sections 2 through 4 of this act may be cited as the "Governmental Immunity Act".

Chapter 268 Section 3

Section 3. DEFINITIONS.--As used in the Governmental Immunity Act:

A. "employment" includes services provided by an immune contractor;

B. "governmental entity" means the state or a local public body;

C. "immune contractor" means a person that:

(1) is an independent contractor; and

(2) contracts with a governmental entity to provide:

(a) care for children in the custody of the human services department, corrections department or department of health, as a licensed foster parent, excluding foster parents certified by a licensed child placement agency; or

(b) services to the children, youth and families department or the corrections department as a licensed medical, psychological or dental arts practitioner;

(3) is a member of:

(a) a state or local selection panel established pursuant to the Juvenile Community Corrections Act;

(b) a state or local selection panel established pursuant to the Adult Community Corrections Act;

(c) the board of directors of the New Mexico comprehensive health insurance pool;

(d) a medical review board, a committee or panel established by the educational retirement board or the retirement board of the public employees retirement association;

(e) the board of directors of the New Mexico educational assistance foundation; or

(f) the board of directors of the New Mexico student loan corporation; or

(4) is a volunteer, employee or board member of a court-created special advocate program;

D. "local public body" means a political subdivision of the state and its agencies, instrumentalities and institutions and a water and natural gas association organized pursuant to Chapter 3, Article 28 NMSA 1978;

E. "public employee" means a natural person that is an officer or employee of a governmental entity; and

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

Chapter 268 Section 4

Section 4. GOVERNMENTAL CIVIL IMMUNITY ESTABLISHED.--A governmental entity, a public employee and an immune contractor are not liable for damages arising out of a claim based upon tort, contract or other civil law claim and caused directly or indirectly by the failure or malfunction of computer hardware, computer software, microchip controlled firmware or other equipment affected by the failure to accurately or properly process dates or times if the failure or malfunction:

A. occurred before December 31, 2005;

B. occurred within the scope of employment of the public employee or within the scope of the contract or the volunteer service program of the immune contractor; and

C. was unforeseeable or was foreseeable but the plan or design, or both, for identifying and preventing it was prepared and implemented in good faith and with the exercise of ordinary care.

HOUSE JUDICIARY COMMITTEE

SUBSTITUTE FOR HOUSE BILL 697

CHAPTER 269

RELATING TO PUBLIC ASSISTANCE; ALLOWING SELF-EMPLOYMENT TO COUNT AS A WORK ACTIVITY.

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

Chapter 269 Section 1

Section 1. Section 27-2B-5 NMSA 1978 (being Laws 1998, Chapter 8, Section 5 and Laws 1998, Chapter 9, Section 5) is amended to read:

"27-2B-5. WORK REQUIREMENTS--WORK PARTICIPATION RATES.--

A. The following qualify as work activities:

(1) unsubsidized employment, including self-employment;

(2) subsidized private sector employment, including self-employment;

(3) subsidized public sector employment; (4) work experience, including work associated with the refurbishing of publicly assisted housing if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance, as long as the department complies with the federal act;

(7) community service programs;

(8) vocational education, except that vocational education shall not qualify as a work activity for longer than is provided by the federal act;

(9) job skills training activities directly related to employment;

(10) education directly related to employment for a participant who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at a secondary school or course of study leading to a certificate of general equivalency in the case of a participant who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to a participant who is participating in a community service program.

B. The department shall recognize community service programs and job training programs that are operated by an Indian nation, tribe or pueblo.

C. The department may not require a participant to work more than four hours per week over the work requirement rate set pursuant to the federal act.

D. The department shall require a parent, caretaker or other adult who is a member of a benefit group to engage in a work activity once the department determines he is ready to engage in a work activity or once he has received cash assistance or services for twenty-four months or as otherwise required by the federal act, whether or not consecutive, whichever is earlier.

E. The following qualify as temporary alternative work activities that the department may establish for no longer than twelve weeks except as otherwise provided:

(1) participating in parenting classes, money management classes or life skills training;

(2) participating in a certified alcohol or drug addiction program;

(3) in the case of a homeless benefit group, finding a home;

(4) in the case of a participant who is a victim of domestic violence residing in a domestic violence shelter or receiving counseling or treatment or participating in criminal justice activities directed at prosecuting the domestic violence perpetrator, for no longer than twenty-four weeks; and

(5) in the case of a participant who does not speak English, participating in a course in English as a second language.

F. Subject to the availability of funds, the department in cooperation with the labor department, New Mexico office of Indian affairs and other appropriate state agencies may develop projects to provide for the placement of participants in work activities, including the following:

(1) participating in unpaid internships with private and government entities;

(2) refurbishing publicly assisted housing;

(3) volunteering at a head start program or a school;

(4) weatherizing low-income housing; and

(5) restoring public sites and buildings, including monuments, parks, fire stations, police buildings, jails, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices and city halls.

G. If a participant is engaged in full-time post-secondary education studies or an activity set out in Paragraphs (9) through (11) of Subsection A of this section, the participant shall engage in another work activity at the same time. Additionally, for two-parent families that receive federally funded child-care assistance, the participant's spouse shall engage in a work activity set out in Paragraphs (1) through (5) or (7) of Subsection A of this section unless the participant suffers from a temporary or complete disability that bars him from engaging in a work activity or he is barred from engaging in a work activity because he provides sole care for a disabled person.

H. A participant engaged in post-secondary education studies shall make reasonable efforts to obtain a loan, scholarship, grant or other assistance to pay for costs and tuition and the department shall disregard those amounts in the eligibility determination.

I. For as long as the described conditions exist, the following are exempt from the work requirement:

(1) a participant barred from engaging in a work activity because he is temporarily or completely disabled;

(2) a participant over age sixty;

(3) a participant barred from engaging in a work activity because he provides the sole care for a disabled person;

(4) a single custodial parent caring for a child less than twelve months old for a lifetime total of twelve months;

(5) a single custodial parent caring for a child under six years of age if the parent is unable to obtain child care for one or more of the following reasons:

(a) unavailability of appropriate child care within a reasonable distance from the parent's home or work as defined by the children, youth and families department;

(b) unavailability or unsuitability of informal child care by a relative under other arrangements as defined by the children, youth and families department; or

(c) unavailability of appropriate and affordable formal child-care arrangements as defined by the children, youth and families department;

(6) a pregnant woman during her last trimester of pregnancy;

(7) a participant prevented from working by a temporary emergency or a situation that precludes work participation for thirty days or less;

(8) a participant who demonstrates by reliable medical, psychological or mental reports, court orders or police reports that family violence or threat of family violence effectively bars the participant from employment; and

(9) a participant who demonstrates good cause of the need for the exemption."

HOUSE BILL 228

CHAPTER 270

RELATING TO HEALTH; CHANGING THE WAY THE DEPARTMENT OF HEALTH PROVIDES BEHAVIORAL HEALTH SERVICES; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Chapter 270 Section 1

Section 1. BEHAVIORAL HEALTH SERVICES--POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH.--Subject to appropriation, the department of health shall:

A. contract for behavioral health services, including mental health, alcoholism and other substance abuse services;

B. establish standards for the delivery of behavioral health services, including quality management and improvement, performance measures, accessibility and availability of services, utilization management, credentialing and recredentialing, rights and responsibilities of providers, preventive behavioral health services, clinical treatment and evaluation and the documentation and confidentiality of client records;

C. establish criteria for determining individual eligibility for behavioral health services; and

D. maintain a management information system in accordance with standards for reporting clinical and fiscal information.

Chapter 270 Section 2

Section 2. CONTRACT ELIGIBILITY.--The department of health may enter into contracts for behavioral health services with municipalities, counties, state institutions of higher education, tribal or pueblo governments or organizations, regional provider

service networks or private nonprofit or for-profit corporations authorized to do business in New Mexico.

Chapter 270 Section 3

Section 3. RULES.--The department of health shall adopt rules pursuant to the State Rules Act and the Department of Health Act to implement the provision of behavioral health services.

Chapter 270 Section 4

Section 4. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended) is amended to read:

"27-5-4. DEFINITIONS.--As used in the Indigent Hospital and County Health Care Act:

A. "ambulance provider" or "ambulance service" means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

B. "board" means a county indigent hospital and county health care board;

C. "indigent patient" means a person to whom an ambulance service, a hospital or a health care provider has provided medical care, ambulance transportation or health care services and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of a board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

D. "hospital" means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of a board the following health facilities if licensed or, in the case of out-of-state hospitals, approved, by the department of health:

(l) for-profit hospitals;

(2) state-owned hospitals; or

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

E. "cost" means all allowable ambulance transportation costs, medical care costs or costs of providing health care services, to the extent determined by resolution of a board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of a board, which includes cost of ancillary services but shall not include the cost of servicing long-term indebtedness of a hospital, health care provider or ambulance service;

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

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

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

I. "department" means the human services department;

J. "sole community provider hospital" means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements set by the department of health;

L. "alcohol rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health;

M. "mental health center" means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health;

N. "health care provider" means:

(1) a nursing home;

(2) an in-state home health agency;

(3) an in-state licensed hospice;

(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

(6) a drug rehabilitation center;

(7) an alcohol rehabilitation center; or

(8) a mental health center;

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

P. "planning" means the development of a countywide or multicounty health plan to improve and fund health services in the county based on the county's needs assessment and inventory of existing services and resources and which demonstrates coordination between the county and state and local health planning efforts."

Chapter 270 Section 5

Section 5. Section 43-3-10 NMSA 1978 (being Laws 1985, Chapter 185, Section 3, as amended) is amended to read:

"43-3-10. DEFINITIONS.--As used in Chapter 43, Article 3 NMSA 1978:

A. "board" means the board of county commissioners of a county;

B. "department" means the department of health;

C. "DWI program" means a community program specifically designed to provide treatment, aftercare or prevention of or education regarding driving while under the influence of alcohol or drugs;

D. "incarceration and treatment facility" means a minimum security detention facility that provides a DWI program;

E. "planning council" means a county DWI planning council;

F. "screening program" means a program that provides screening or examination by alcoholism treatment professionals of persons charged with or convicted of driving while intoxicated or other offenses to determine whether the person is:

(1) physically dependent on alcohol and thus suffering from the disease of alcoholism;

(2) an alcohol abuser who has not yet developed the alcoholism disease syndrome but has an entrenched pattern of pathological use of alcohol and social or occupational impairment in function from alcohol abuse; or

(3) neither an alcoholic nor an alcohol abuser such that alcoholism treatment is not necessary;

and that provides referral or recommendation of such persons to the most appropriate treatment; and

G. "statewide substance abuse services plan" means the comprehensive plan for a statewide services network developed by the department that documents the extent of New Mexico's substance abuse problem and statewide needs for prevention, screening, detoxification, short-term and long-term rehabilitation, outpatient programs and DWI programs. The plan shall be based on the continuum of care concept of a comprehensive prevention and treatment system."

Chapter 270 Section 6

Section 6. Section 43-3-11 NMSA 1978 (being Laws 1985, Chapter 185, Section 4, as amended) is amended to read:

"43-3-11. POWERS AND DUTIES OF THE DEPARTMENT.--

A. The department shall adopt rules to provide for:

(1) minimum standards of service for DWI programs that contract for funds pursuant to the department's behavioral health services rules; provided that rules adopted pursuant to this section shall, before adoption, have been presented to all interested parties in a public hearing;

(2) the format and guidelines for county DWI plans and the criteria for evaluating them; and

(3) procedures for reporting of programmatic and financial information necessary to evaluate the effectiveness of programs funded. Evaluation of program effectiveness shall include an analysis of outcome-based measures and the impact of the programs on the incidence of driving while under the influence of intoxicating liquor or drugs and shall be reported to the legislature annually.

B. The department shall provide technical assistance and training to assist each county as needed in developing its DWI plan.

C. The department shall review the impact of the programs on the reduction of the incidence of driving while under the influence of intoxicating liquor or drugs, approve county DWI plans and incorporate these plans into the statewide substance abuse services plan in accordance with Section 43-3-13 NMSA 1978.

D. Any screening programs funded pursuant to the behavioral health services rules shall be established in collaboration with the district, magistrate, metropolitan and municipal courts to be served by the screening program. Whenever feasible, the screening program shall not be provided by an alcoholism treatment program serving the judicial districts involved in order to avoid conflict of interest in recommending that offenders enter treatment."

Chapter 270 Section 7

Section 7. Section 43-3-13 NMSA 1978 (being Laws 1985, Chapter 185, Section 6, as amended) is amended to read:

"43-3-13. STATEWIDE SUBSTANCE ABUSE SERVICES PLAN.--

A. The department shall develop and update annually prior to August 30 a statewide substance abuse services plan that documents the extent of New Mexico's substance abuse problem. The plan shall describe the effectiveness of existing services and shall document needs based on a statewide assessment that reflects local planning, concerns and priorities.

B. The department shall annually invite comment and review of the substance abuse services plan for a period of no less than thirty days prior to its publication.

C. The department shall make decisions concerning proposed substance abuse programs consistent with the priorities and service system concepts contained in the current statewide substance abuse services plan."

Chapter 270 Section 8

Section 8. Section 59A-47-35 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.34) is amended to read:

"59A-47-35. ALCOHOL DEPENDENCY COVERAGE.--

A. Each health care plan that delivers or issues for delivery in this state a group contract providing for health care expense payments on a service benefit basis or an indemnity benefit basis or both shall offer and make available benefits for the necessary care and treatment of alcohol dependency. Such benefits shall:

(1) be subject to annual deductibles and coinsurance consistent with those imposed on other benefits within the same contract;

(2) provide no less than thirty days necessary care and treatment in an alcohol dependency treatment center and thirty outpatient visits for alcohol dependency treatment; and

(3) be offered for benefit periods of no more than one year and may be limited to a lifetime maximum of no less than two benefit periods.

Such offer of benefits shall be subject to the rights of the group contract holder to reject the coverage or to select any alternative level of benefits if that right is offered by or negotiated with that health care plan.

B. For purposes of this section, "alcohol dependency treatment center" means a facility that contracts with the health care plan and that provides a program for the treatment of alcohol dependency pursuant to a written treatment plan approved and monitored by a physician or meeting the quality standards of the department of health and which facility also:

(1) is affiliated with a hospital under a contractual agreement with an established system for patient referral;

(2) is accredited as such a facility by the joint commission on accreditation of hospitals; or

(3) meets at least the minimum standards adopted by the department of health.

C. This section applies to contracts delivered or issued for delivery or renewed, extended or amended in this state on or after July 1, 1983 or upon expiration of a collective bargaining agreement applicable to a particular contract holder, whichever is later; provided that this section does not apply to blanket, short-term travel, accident-only, limited or specified disease, individual conversion contracts or contracts designed for issuance to persons eligible for coverage under Title 18 of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans. With respect to any contract forms approved by the insurance division prior to the effective date of this section, an insurer is authorized to comply with this section by the use of endorsements or riders, provided such endorsements or riders are approved by

the insurance division as being in compliance with this section and applicable provisions of the Insurance Code.

D. If an organization offering group health benefits to its members makes more than one health care plan or health insurance plan policy available to its members on a member option basis, the organization shall not require alcohol dependency coverage from one health care plan or health insurer without requiring the same level of alcohol dependency coverage for all other health care plans or health insurance policies that the organization makes available to its members."

Chapter 270 Section 9

Section 9. TEMPORARY PROVISION--RECOMPILATION.--Section 26-2-4.1 NMSA 1978 (being Laws 1987, Chapter 265, Section 5, as amended) is recompiled as Section 9-7-17 NMSA 1978.

Chapter 270 Section 10

Section 10. REPEAL.--Sections 23-7-1 through 23-7-12, 26-2-1 through 26-2-4, 26-2-5 through 26-2-14, 43-3-8, 43-3-9 and 43-3-12 NMSA 1978 (being Laws 1973, Chapter 378, Section 1, Laws 1975, Chapter 104, Sections 1 through 11, Laws 1971, Chapter 244, Sections 1 through 12, Laws 1971, Chapter 296, Section 1, Laws 1972, Chapter 10, Section 1 and Laws 1985, Chapter 185, Sections 1, 2 and 5, as amended) are repealed.

Chapter 270 Section 11

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

HOUSE BILL 604, AS AMENDED

CHAPTER 271

RELATING TO THE STATE QUESTION; PROVIDING FOR AN OFFICIAL NEW MEXICO STATE QUESTION.

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

Chapter 271 Section 1

Section 1. Section 12-3-4 NMSA 1978 (being Laws 1927, Chapter 102, Section 1, as amended by Laws 1989, Chapter 8, Section 1 and also by Laws 1989, Chapter 154, 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.--

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."

HOUSE BILL 725

CHAPTER 272

RELATING TO LICENSURE; CHANGING PROVISIONS CONCERNING LICENSURE OF CERTAIN OCCUPATIONS, PROFESSIONS AND BUSINESSES; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 272 Section 1

Section 1. Section 36-2-27 NMSA 1978 (being Laws 1909, Chapter 53, Section 26, as amended) is amended to read:

"36-2-27. PRACTICE WITHOUT ADMISSION--CONTEMPT OF COURT--FOREIGN ATTORNEYS.--No person shall practice law in a court of this state, except a magistrate court, nor shall a person commence, conduct or defend an action or proceeding unless he has been granted a certificate of admission to the bar under the provisions of Chapter 36 NMSA 1978. No person not licensed as provided in that chapter shall advertise or display any matter or writing whereby the impression may be gained that he is an attorney or counselor at law or hold himself out as an attorney or counselor at law, and all persons violating the provisions of that chapter shall be deemed guilty of contempt of the court in which the violation occurred, as well as of the supreme court of the state; provided, however, that nothing in this section shall be construed to prohibit persons residing beyond the limits of this state, otherwise qualified, from assisting resident counsel in participating in an action or proceeding."

Chapter 272 Section 2

Section 2. 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 and receipt for, and persons so served shall pay to the superintendent, fees, licenses and miscellaneous charges as follows:

A. insurer's certificate of authority -

(1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the
application..$1,000.00

(2) annual continuation of certificate of authority, per kind of insurance, each year continued...........................200.00

(3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978)..150.00

(4) amendment to certificate of authority..200.00

B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA
1978)..
..................................10.00

C. annual statement of insurer,
filing...200.00

D. service of process, acceptance by superintendent and issuance of certificate of service, where issued............10.00

E. agents' licenses and appointments -

(1) filing application for original agent license and issuance of license, if issued 30.00

(2) appointment of agent -

(a) filing appointment, per kind of insurance, each
insurer..20.00

(b) continuation of appointment, each insurer, each year
continued..20.00

(3) variable annuity agent's license -

(a) filing application for license and issuance of license, if
issued...30.00

(b) continuation of appointment each
year..20.00

(4) temporary license as to life and health insurance or
both..30.00

(a) as to property
insurance...30.00

(b) as to casualty/surety
insurance...30.00

(c) as to vehicle
insurance...30.00

F. solicitor license -

(1) filing application for original license and issuance of license, if
issued...30.00

(2) continuation of appointment, per kind of insurance, each year..20.00

G. broker license -

(1) filing application for license and issuance of original license, if issued..30.00

(2) annual continuation of license...30.00

H. insurance vending machine license -

(1) filing application for original license and issuance of license, if issued, each machine......................................25.00

(2) annual continuation of license, each machine...25.00

I. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules and regulations, and payable as to each instance of examination...50.00

J. surplus line broker license -

(1) filing application for original license and issuance of license, if issued..100.00

(2) annual continuation of license 100.00

K. adjuster license -

(1) filing application for original license and issuance of license, if issued..30.00

(2) annual continuation of license...30.00

L. rating organization or rating advisory organization license -

(1) filing application for license and issuance of license, if issued..100.00

(2) annual continuation of
license...100.00

M. nonprofit health care plans -

(1) filing application for preliminary permit and issuance of permit, if
issued...100.00

(2) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(3) annual statement,
filing...200
.00

(4) agents and solicitors -

(a) filing application for original license and issuance of license, if
issued...30.00

(b) examination for license conducted directly by superintendent, each instance of examination 50.00

(c) annual continuation of
appointment...20.00

N. prepaid dental plans -

(1) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(2) annual report,
filing...
200.00

(3) agents and solicitors -

(a) filing application for original license and issuance of license, if
issued...30.00

(b) examination for license conducted directly by superintendent, each instance of examination...........................50.00

(c) continuation of license,each
year...20.00

O. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

P. premium finance companies -

(1) filing application for original license and issuance of license, if issued...100.00

(2) annual renewal of license...100.00

Q. motor clubs -

(1) certificate of authority -

(a) filing application for original certificate of authority and issuance of certificate of authority, if issued.............200.00

(b) annual continuation of certificate of authority 100.00

(2) sales representatives -

(a) filing application for registration or license and issuance of registration or license, if issued, each representative 20.00

(b) annual continuation of registration or license, each representative 20.00

R. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, ifissued 30.00

(2) examination for license conducted directly by superintendent, each instance of examination..........................50.00

(3) continuation of appointment, each year 20.00

S. securities salesperson license -

(1) filing application for license and issuance of license, if issued..25.00

(2) renewal of license, each year..25.00

T. for each signature and seal of the superintendent affixed to any instrument..10.00

U. required filing of forms or rates -

(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

V. health maintenance organizations -

(1) filing an application for a certificate of authority..1,000.00

(2) annual continuation of certificate of authority, each year continued..200.00

(3) filing each annual report..200.00

(4) filing an amendment to organizational documents requiring approval..200.00

(5) filing informational amendments...50.00

(6) agents and solicitors -

(a) filing application for original license and issuance of license, if issued...30.00

(b) examination for license, each instance of examination...50.00

(c) annual continuation of appointment...20.00

W. purchasing groups and foreign risk retention groups -

(1) original registration...500.00

(2) annual continuation of registration...200.00

(3) agent or broker fees same as for authorized insurers.

Notwithstanding the fees required in this subsection, an insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, or both, whenever any form or rate-filing fees in excess of those imposed by the laws of this state are charged to insurers in New Mexico doing business in another state or whenever any condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees shall be imposed upon every insurer from every other state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer fails to comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent shall refuse to grant or shall withdraw approval of the tendered form or rate filing.

Except as to certain appointment fees as specified in Section 59A-11-8 NMSA 1978, all fees are deemed earned when paid and are not refundable."

Chapter 272 Section 3

Section 3. Section 59A-11-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 181) is amended to read:

"59A-11-2. APPLICATION FOR LICENSE--INDIVIDUAL.--

A. Where a license is required under the Insurance Code for categories referred to in Section 59A-11-1 NMSA 1978, application by an individual shall be filed with, and on a form prescribed and furnished by, the superintendent. The application shall be signed by the applicant, under oath if required by the form, and by or on behalf of the proposed principal where expressly required in the form.

B. The application form may require information about applicant as to:

(1) name, date of birth, social security number, residence and business address if applicable;

(2) personal history, business experience in general;

(3) experience or special training or education in the kind of business to be transacted under the license applied for;

(4) previous licensing;

(5) type of license applied for and kinds of insurance or transactions to be covered thereby;

(6) proof of applicant's identity; and

(7) such other pertinent information and matters as the superintendent may reasonably require.

C. Application for license as insurance agent shall be accompanied by appointment of the applicant as agent by at least one insurer, conditioned upon issuance of the license. Application for license as insurance solicitor or as agent or solicitor as to dental and health care plan, motor club, bail bondsman, and other principals shall be accompanied by appointment of the applicant by the proposed principal as solicitor or agent, as the case may be, subject to issuance of the license applied for.

D. In all such appointments the principal or principal's representative if so required by the superintendent shall certify in writing as to his knowledge of the applicant, as to applicant's residence, experience had or special training received or to be given as to business to be transacted under the license, applicant's business and personal reputation, whether applicant is trustworthy and worthy of licensing, and whether satisfied that applicant intends in good faith to engage in the business to be covered by the license, and appointment of applicant is not to enable applicant to evade the intent or spirit of any controlled business, anti-rebate or anti-discrimination law or other law.

E. The application form shall also require information as to additional matters expressly required to be included therein in articles of the Insurance Code relating to particular licenses.

F. The application shall be accompanied by the applicable license application filing fee specified in Section 59A-6-1 NMSA 1978, by bond where expressly required under other provisions of the Insurance Code, and by the fee specified in such fee schedule for any examination required under the Insurance Code to be taken and passed by the applicant prior to licensing."

Chapter 272 Section 4

Section 4. Section 59A-11-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 189) is amended to read:

"59A-11-10. CONTINUATION, EXPIRATION OF LICENSE.--

A. Each license, other than insurance agent, issued under this article shall continue in force until it is suspended, revoked or otherwise terminated, but except as may be provided pursuant to Section 59A-11-11 NMSA 1978, subject to payment to the superintendent annually on or before April 1, or December 31 as to motor club representatives, of the applicable continuation fee specified in Section 59A-6-1 NMSA 1978 accompanied by request for such continuation:

(1) for broker, surplus line broker, independent adjuster, bail bondsman license and similar other independent licensees, request shall be made and signed by the licensee;

(2) for agent (other than insurance agent) or staff adjuster, or solicitor license, request shall be made and signed by the employer or other principal, as applicable; or

(3) for vending machine, request shall be made and signed by the supervisory agent thereof.

B. Subject to Section 59A-11-11 NMSA 1978, any license referred to in Subsection A of this section, not so continued shall be deemed to have terminated as of midnight on April 30, or December 31 as to motor club representatives, then current; except that the superintendent may effectuate a request for continuation received within thirty days thereafter if accompanied by annual continuation fee equal to one hundred fifty percent of the continuation fee otherwise required.

C. An insurance agent's license shall continue in force while there is in effect as to the licensee as shown by the superintendent's records an appointment or appointments as agent of authorized insurers covering collectively all of the kinds of insurance included in the agent's license. Upon termination of all the licensee's agent appointments as to a particular kind of insurance and failure to replace such appointment within sixty days thereafter, the license shall expire and terminate as to such kind of insurance; and the licensee shall promptly deliver the license to the superintendent for reissuance, without fee or charge, as to the kinds of insurance covered by the licensee's remaining agent appointments. Upon termination of all of the licensee's agent appointments under the license, the license shall forthwith terminate.

D. If the superintendent has reason to believe that the competence of any licensee, or individual designated to exercise license powers, is questionable, the superintendent may require as condition to continuation of the license or license powers that the licensee or individual take and pass to the superintendent's satisfaction a written

examination as required under the Insurance Code of new individual applicants for similar license.

E. This section shall not apply as to temporary licenses, which shall be for such duration and subject to extension as provided in the respective sections of the Insurance Code by which such licenses are authorized.

F. All licenses and appointments as to an insurer or other principal which ceases to be authorized to transact business in this state shall automatically terminate without notice as of date of such cessation.

G. A license shall also terminate upon death of the licensee, if an individual, or dissolution if a corporation, or change in partnership members if a firm; subject, in case of a firm, to continuation of the license for a reasonable period while application for new license is being made or pending, under reasonable conditions provided in regulations of the superintendent."

Chapter 272 Section 5

Section 5. Section 59A-12-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 205) is amended to read:

"59A-12-4. "SOLICITOR" DEFINED.--For the purposes of Chapter 59A, Article l2 NMSA 1978 a "solicitor" is an individual employed by a licensed agent to solicit insurance and perform such other duties in handling the agent's business as the agent may authorize."

Chapter 272 Section 6

Section 6. Section 59A-12-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 209) is amended to read:

"59A-12-8. CONTROLLED BUSINESS.--

A. The superintendent shall not issue or permit to remain in force a license as agent, solicitor, or broker or if the superintendent finds or has cause to believe that the license has been or probably will be used chiefly for the purpose of writing insurance on the lives, property or risks of the licensee or proposed licensee, or of his family members, employees, employer, business associates, or directors, officers, employees or principal stockholders of a corporation by which he is employed or retained, or of which he is an officer, director or principal stockholder, or members or employees of any firm or other business entity with which he is associated or by which he is employed or retained.

B. A license shall be deemed used or to be used for writing of such controlled business if the superintendent finds that in any calendar year commissions or other compensation earned with respect to such business exceeded, or probably would exceed, fifty percent of all commissions and compensation earned, or probably to be earned, in such

calendar year as to all business written or likely to be written under the license during the same such year."

Chapter 272 Section 7

Section 7. Section 59A-12-10 NMSA 1978 (being Laws 1997, Chapter 48, Section 1) is amended to read:

"59A-12-10. LICENSING OF LENDING INSTITUTION--DEFINITIONS AND EXCEPTIONS.--

A. As used in this section:

(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business includes accepting deposits or lending money in New Mexico, including banks, savings and loan associations and credit unions; "lending institution" does not include insurance companies;

(2) "holding company", "subsidiary" and "affiliate" mean those terms as defined in regulations adopted by the superintendent, except "bank holding company" means that term as defined in Section 2 of the federal Bank Holding Company Act of 1956;

(3) "public utility" means a private employer subject to the jurisdiction of the commission that is engaged in the business of providing telecommunications, electric, gas, water or stream heat services to the public;

(4) "sell" means to engage in the solicitation, sale and placement of insurance and such other related activities conducted by an agent, solicitor or broker pursuant to the Insurance Code;

(5) "service contract" means a contract issued on consumer products pursuant to which the vendor or manufacturer bears the cost of the repair or replacement of the consumer product;

(6) "insurance premium finance agreement" means an agreement by which an insured or a prospective insured promises to pay to any person engaged in the business of premium financing, the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract; and

(7) "loan transaction" and any other reference to lending or extension of credit does not include loans made by broker-dealers registered in accordance with applicable state and federal securities laws that are wholly collateralized by securities.

B. A lending institution may be licensed to sell:

(1) any insurance except title insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(2) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this paragraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements; and

(7) travel accident or baggage insurance.

E. A lending institution shall not require as a condition precedent to the extension of credit, or any subsequent renewal thereof, or the procurement of other bank services that the customer purchase insurance through a particular insurer, agent, solicitor or broker.

F. A lending institution shall not extend credit, lease or sell property or furnish any other service or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance from that lending institution or from a particular insurer, agent, solicitor or broker.

G. A lending institution shall not impose a requirement on an insurance agent, solicitor or broker who is not associated with the lending institution that is not imposed on an insurance agent, solicitor or broker who is associated with that institution or, unless otherwise authorized by applicable federal or state law, require a debtor, insurer, agent,

solicitor or broker to pay a separate charge in connection with the handling of insurance that is required under a contract.

H. A lending institution, except an institution that does not accept deposits that are federally insured, that sells insurance on its premises shall:

(1) conspicuously post a notice that is clearly visible to anyone who may purchase insurance that insurance is not a deposit account insured by a federal deposit insuring agency;

(2) orally inform a prospective purchaser of insurance that insurance is not a deposit account insured by a federal deposit insuring agency; and

(3) provide a written disclosure to the customer containing the following statements before the sale of insurance is complete:

(a) insurance is not a lending institution deposit account and is not insured by its federal deposit insuring agency;

(b) insurance is not an obligation of or guaranteed by the lending institution;

(c) the customer is not required to obtain insurance from a particular lending institution, agent, solicitor or broker; and

(d) where applicable, insurance involves investment risk, including potential loss of principal.

I. The sale of insurance by a lending institution, except an institution that does not accept deposits that are federally insured, shall be effectuated in such a manner so as to avoid confusion between federally insured deposit products offered by a lending institution and the nonfederally insured insurance sold. Insurance advertisements and other sales material shall be accurate and not misleading or deceptive. Insurance advertising and other sales materials regarding insurance shall include disclosures that contain language that is the same or substantially similar to the following:

(1) insurance is not a lending institution deposit and is not insured by its federal deposit insuring agency;

(2) insurance is not an obligation of or guaranteed by the lending institution; and

(3) where applicable, insurance involves investment risk, including potential loss of principal.

J. Insurance operations may be conducted by the lending institution, its holding company, an affiliate or subsidiary of either or through a separate corporate entity or partnership.

K. A lending institution shall not provide nonpublic customer information to a third party for the purpose of another's sale of insurance without written authorization from the customer. As used in this subsection, "nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution. "Nonpublic customer information" does not include customer names and addresses and telephone numbers or information about an individual that could be obtained from an unaffiliated credit bureau that is subject to the federal Fair Credit Reporting Act by a third party that is not entering into a credit relationship with the individual but has a legitimate need for the information in connection with a business transaction with the individual, except that "nonpublic customer information" includes information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims and insurance history of an individual. Notwithstanding any provision in this section to the contrary, compliance with Section 603 of the federal Fair Credit Reporting Act by a lending institution shall be deemed to be full compliance with this subsection. "Nonpublic customer information" does not include material excluded from the definition of "consumer report" by Section 603(d)(2)(A) of the federal Fair Credit Reporting Act.

L. Records relating to the insurance sales of a lending institution, including files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to the banking transactions of the lending institution. Records pertaining to insurance activities of the lending institution or copies of those records shall be subject to the inspection and audit by the insurance division. If the division determines to inspect and audit the records relating to the insurance activities of a lending institution, that institution shall make available to the division, at a location in New Mexico the lending institution's records and knowledgeable personnel to assist in the interpretation of the lending institution's records.

M. A lending institution, or officer, director or employee acting on behalf of the institution, who qualifies for issuance of an agent's, solicitor's or broker's license pursuant to the Insurance Code may be issued an agent or broker license authorizing the sale of insurance.

N. A lending institution shall not pay a commission or other valuable consideration to a person for services of an insurance agent, solicitor or broker unless the person performing the service holds a valid insurance license for the class of insurance for which the service is rendered or performed at the time the service is performed. No person, other than a person properly licensed in accordance with the Insurance Code, shall accept any commission or valuable consideration for those services.

O. A lending institution shall not offer an inducement to a customer to purchase insurance from the institution other than as plainly expressed in the insurance policy. Investment programs, memberships or other programs designed or represented to waive, reduce, pay, produce or provide funds to pay all or part of the cost on insurance are an illegal inducement.

P. A lending institution may not in the same transaction solicit the purchase of insurance from a customer who has applied for a loan from the institution before the time the customer has received a written commitment from the lending institution with respect to that loan, or, in the event that no written commitment has been or will be issued in connection with the loan, a lending institution shall not solicit the purchase of insurance before the time the customer receives notification of approval of the loan by the lending institution and the institution creates a written record of the loan approval. This subsection shall not apply when a lending institution contacts a customer in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

Q. The sale of insurance by a lending institution, credit union, sales finance company, insurance company, insurance agent, an institution that grants or arranges consumer credit or an institution that solicits or makes loans in New Mexico may be conducted by a person whose responsibilities include loan transactions or other transactions involving the extension of credit so long as the person who is primarily responsible for making the specific loan or extension of credit is not the same person engaged in the sale of insurance for that same transaction; provided, however, that the provisions of this subsection shall not apply to:

(1) a broker or dealer registered under the federal Securities Exchange Act of 1934; or

(2) a lending institution location that has three or fewer persons with lending authority.

R. If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

S. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer, which may be evidenced by compliance with the federal Truth in Lending Act.

T. A person who engages in loan transactions at any office of, or on behalf of, a lending institution or any other agent, employee, director or officer of the lending institution may refer a customer who seeks to purchase, or seeks an opinion or advice on any insurance product, to a person, or may give the phone number of a person, who sells or provides opinions or advice on such products only if the customer expressly requests the referral; the person who engages in loan transactions does not solicit the customer request; and the person who engages in the loan transaction does not receive any compensation for the referral.

U. The location for the sale of insurance on the premises of a lending institution, except an institution that does not accept deposits that are federally insured, to the extent practicable shall be:

(1) physically located to be distinct from the lending activities of the institution; and

(2) clearly and conspicuously signed to be easily distinguishable by the public as separate and distinct from the lending activities of the institution.

V. Signs and other informational material concerning the availability of insurance products from the lending institution or third party soliciting the purchase of or selling insurance on the premises of the lending institution shall not be displayed to the extent practicable in an area where application for loans or other extensions of credit are being taken or closed.

W. Nothing in this section grants a lending institution, including its holding company, subsidiary or affiliate, except those enumerated in this section, the power to sell insurance that was not allowed prior to July 1, 1997.

X. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures.

Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section."

Chapter 272 Section 8

Section 8. Section 59A-12-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 213) is amended to read:

"59A-12-12. GENERAL QUALIFICATIONS FOR INDIVIDUAL AGENT, BROKER OR SOLICITOR LICENSE.--For the protection of the public in New Mexico, the superintendent shall not issue, continue or permit to exist a license to an individual as agent, broker or solicitor except as to an individual qualified as follows:

A. must be eighteen years of age or older;

B. must have passed any examination required for licensing;

C. must be competent, trustworthy and financially responsible;

D. if for license as an agent, must be appointed as an agent by an authorized insurer, subject to issuance of a license;

E. if for license as a solicitor, must be employed as a solicitor by a licensed agent, subject to issuance of the license; and

F. must be in compliance with other applicable qualifications and requirements of the Insurance Code."

Chapter 272 Section 9

Section 9. Section 59A-12-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 216) is amended to read:

"59A-12-15. LICENSING FIRMS, CORPORATIONS.--

A. The superintendent shall license a firm or corporation only as an agent or broker.

B. For license as agent each general partner and each individual to act for the firm, or each individual to act for the corporation, shall be named in the license or registered with the superintendent, and shall qualify as though for license as an individual."

Chapter 272 Section 10

Section 10. Section 59A-12-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 217) is amended to read:

"59A-12-16. EXAMINATION FOR LICENSE.--

A. Each applicant for license as agent, solicitor or broker shall, prior to issuance of license, personally take and pass an examination authorized by the superintendent to establish the applicant's competence, knowledge and understanding of attendant responsibility and duties as to the insurance business to be transacted under the license applied for; except, that no such examination shall be required:

(1) for renewal or continuance of an existing license, except as provided in Subsection D of Section 59A-11-10 NMSA 1978;

(2) of an applicant for limited license as provided in Section 59A-12-18 NMSA 1978;

(3) of applicants with respect to life and health, or life or health, insurances who hold the chartered life underwriter (C.L.U.) designation by the American college of life underwriters;

(4) of applicants with respect to property, casualty, surety, marine and transportation, and vehicle insurances, or any of them, who hold the designation of chartered property and casualty underwriter (C.P.C.U.) designation by the American institute of property and casualty underwriters;

(5) of applicants for temporary license as provided for in Section 59A-12-19 NMSA 1978;

(6) of an applicant for a license covering the same kind or kinds of insurance as to which licensed in this state under a similar license within five years preceding date of

application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(7) of an applicant for solicitor license who held license as agent in this state as to the same kind or kinds of insurance within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(8) of an applicant for broker or agent license, if the superintendent is satisfied that the applicant took and passed a similar examination in a state in which already licensed, subject to Section 59A-5-33 NMSA 1978; or

(9) of applicant for license only as title insurance agent.

B. The superintendent shall conduct examinations as provided for in Chapter 59A, Article 11 NMSA 1978."

Chapter 272 Section 11

Section 11. Section 59A-12-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 218) is amended to read:

"59A-12-17. SCOPE OF LICENSE.--

A. Except as to limited licenses identified in Section 59A-12-18 NMSA 1978, an agent's or broker's license shall cover the kind of insurance, or major subdivisions of life or health insurance, for which the applicant has applied and qualified, including the following:

(1) life insurance, or any or all of the following subdivisions thereof:

(a) industrial life insurance;

(b) debit insurance;

(c) credit life insurance; or

(d) variable annuity contracts;

(2) health insurance, credit health insurance, or industrial health insurance, or other subdivisions thereof;

(3) property insurance;

(4) casualty insurance;

(5) surety insurance;

(6) marine and transportation insurance;

(7) vehicle insurance; or

(8) title insurance.

B. The scope of a solicitor's license is subject to Section 59A-12-14 NMSA 1978.

C. License of a broker shall cover the kind or kinds of insurance applied and qualified for, within the classifications stated in Subsection A of this section.

D. A licensee as to variable annuities or similar contracts deemed to constitute also securities, shall also possess license as a security salesman under other applicable state laws."

Chapter 272 Section 12

Section 12. Section 59A-12-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 221) is amended to read:

"59A-12-20. PLACE OF BUSINESS--DISPLAY OF LICENSE.--

A. Every general lines agent shall have and maintain a place of business accessible to the public, wherein the licensee conducts transactions under the license. The address of the place of business shall appear upon the application for license when issued, and the licensee shall promptly notify the superintendent in writing of any change of address. Nothing in this section shall prohibit maintenance of the place of business in the licensee's residence.

B. The licenses of the licensee and those of solicitors employed by him shall be conspicuously displayed in the place of business in a part customarily open to the public.

C. This section does not apply to life insurance, annuity contracts or health insurance."

Chapter 272 Section 13

Section 13. Section 59A-12-23 NMSA 1978 (being Laws 1984, Chapter 127, Section 224) is amended to read:

"59A-12-23. INSURANCE VENDING MACHINES.--

A. A licensed agent may solicit for and issue personal travel accident insurance policies of an authorized insurer by means of mechanical vending machines supervised by the

agent and placed at airports and other places of convenience to the traveling public, if the superintendent finds that:

(1) the policy provides reasonable coverage and benefits, is suitable for sale and issuance by vending machine and use of such a machine in a proposed location would be of material convenience to the public;

(2) the type of machine proposed to be used is reasonably suitable for the purpose;

(3) reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;

(4) reasonable means are provided for refund of money inserted in defective machines and for which insurance so paid for is not received; and

(5) the cost of maintaining such a machine at a particular location is reasonable.

B. For each machine to be used the superintendent shall issue to the applicant a special vending machine license. The license shall state the name and address of the insurer and agent, name of the policy to be sold and serial number and operating location of the machine. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The superintendent shall also revoke the license as to any machine as to which he finds that license qualifications no longer exist. Proof of existence of a subsisting license shall be displayed on or about each machine in use in such manner as the superintendent reasonably requires."

Chapter 272 Section 14

Section 14. Section 59A-12-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 225) is amended to read:

"59A-12-24. SHARING OF COMMISSIONS.--

A. An agent or broker shall share a commission or compensation for or on account of the solicitation or negotiation in this state of insurance on individuals or property or risks in this state only with the agent's duly licensed solicitor, or duly licensed agent of the insurer with which the insurance was placed, or duly licensed broker.

B. No such licensee shall share in commission or compensation as to a kind of insurance for which not licensed.

C. Such sharing in commissions and compensation between the same such licensees shall be infrequently only, and shall not unduly obviate the general necessity of appointment of the agent by the insurer with which the insurance is placed.

D. Nothing in the Insurance Code shall be deemed to prohibit payment, to or for the account of a former owner of an insurance agency or brokerage, of commissions or part thereof currently accruing on business of the agency or brokerage, as part of the purchase price of the agency or brokerage, whether or not such former owner is currently licensed as agent, solicitor or broker."

Chapter 272 Section 15

Section 15. Section 59A-12-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 226) is amended to read:

"59A-12-25. NONRESIDENT BROKERS, NONRESIDENT AGENTS AND NONRESIDENT SOLICITORS--RETALIATION.--

A. The superintendent may refuse to issue a license as a broker, agent or solicitor to a resident of another state or country, who is otherwise qualified under this article for license as a broker, agent or solicitor in New Mexico, if under the laws of the other state or country licensed residents of this state are prohibited or prevented from acting as broker, agent or solicitor because of their residence.

B. As part of an application for a license, the nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action against or involving the licensee as to transactions under the license. The appointment shall be irrevocable and continue for so long as an action could arise or exist. Duplicate copies of process shall be served upon the superintendent or other individual in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the licensee at his last address of record with the superintendent. Process served and copy forwarded as so provided shall for all purposes constitute personal service upon the licensee.

C. The licensee shall likewise file with the superintendent written agreement to appear before the superintendent pursuant to notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the licensee at his last address of record with the superintendent, and that upon failure of the licensee to appear the licensee thereby consents to any subsequent suspension, revocation or refusal of the superintendent to continue the license."

Chapter 272 Section 16

Section 16. Section 59A-12-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 227, as amended) is amended to read:

"59A-12-26. CONTINUED EDUCATION.--

A. For protection of the public and to preserve and improve competence of licensees, the superintendent may in his sole discretion require as a condition to continuation of license as agent, solicitor or broker under this article that during the twelve months next preceding expiration of the current license period the licensee has attended the minimum number of hours of formal class instruction, lectures or seminars required and approved by the superintendent covering the kinds of insurance for which licensed.

B. Such instruction shall be designed to refresh the licensee's understanding of basic principles and coverages involved, recent and prospective changes therein, applicable laws and rules and regulations of the superintendent, proper conduct of the licensee's business and duties and responsibilities of the licensee.

C. The superintendent may permit licensees who because of remoteness of residence or business cannot with reasonable convenience attend such formal instruction sessions to take and successfully complete an equivalent course of study and instruction by mail.

D. The superintendent shall promulgate rules and regulations for effectuation of the purposes and requirements of this section and may impose a penalty not to exceed fifty dollars ($50.00) for a licensee's failure to timely report continuing education credits.

E. For the purposes of this section, the superintendent shall charge, at the time of certifying each licensee's continuing education credits as a condition of continuation of license, a fee of five dollars ($5.00).

F. This section shall not apply to holders of limited license issued under Section 59A-12-18 NMSA 1978."

Chapter 272 Section 17

Section 17. Section 59A-12B-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 29) is amended to read:

"59A-12B-3. LICENSURE.--

A. No person, firm, association or corporation shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer authorized in this state unless such person is a licensed agent or broker in this state.

B. No person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as an agent or broker in this state pursuant to the provisions of the Managing General Agents Law.

C. The superintendent may require a bond in an amount acceptable to him for the protection of the insurer.

D. The superintendent may require the managing general agent to maintain an errors and omissions policy."

Chapter 272 Section 18

Section 18. Section 59A-12D-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 44) is amended to read:

"59A-12D-3. LICENSURE.--

A. No person, firm, association or corporation shall act as a reinsurance intermediary-broker in this state if it maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) in this state, unless such reinsurance intermediary-broker is a licensed producer in this state; or

(2) in another state, unless such reinsurance intermediary-broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a reinsurance intermediary.

B. No person, firm, association or corporation shall act as a reinsurance intermediary-manager:

(1) for a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(2) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(3) in another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a reinsurance intermediary.

C. The superintendent may require a reinsurance intermediary-manager subject to the provisions of Subsection B to:

(1) file a bond in an amount from an insurer acceptable to the superintendent for the protection of the reinsurer; and

(2) maintain an errors and omissions policy in an amount acceptable to the superintendent.

D.

(1) The superintendent may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of the Reinsurance Intermediary Law. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the superintendent as agent for service of process in the manner, and with the same legal effect, provided for by the Reinsurance Intermediary Law for designation of service of process upon unauthorized insurers; and also shall furnish the superintendent with the name and address of a resident of this state upon whom notices or orders of the superintendent or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the superintendent in writing of every change in its designated agent for service of process and such change shall not become effective until acknowledged by the superintendent.

E. The superintendent may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, anyone named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license. Upon written request by the applicant, the superintendent will furnish a summary of the basis for refusal to issue a license, which document shall be subject to the provisions of Section 59A-11-20 NMSA 1978.

F. Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section."

Chapter 272 Section 19

Section 19. Section 59A-14-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 245) is amended to read:

"59A-14-7. SURPLUS LINE BROKER LICENSE REQUIRED--QUALIFICATIONS FOR LICENSE.--

A. No person shall in New Mexico be, act as or hold out to be, a surplus line 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 line 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 line 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 line 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 line broker;

(2) if 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 line broker, and an additional license fee shall be paid as to each individual, in excess of one, who is to exercise the surplus line broker license powers; and

(3) must file with the application the bond provided for in Section 59A-14-8 NMSA 1978.

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 272 Section 20

Section 20. Section 59A-35-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 606, as amended) is amended to read:

"59A-35-17. QUALIFICATIONS, PROCEDURE FOR SECURITY SALESPERSON LICENSE.--

A. Applicants for license as securities salesperson shall be qualified as follows:

(1) be an individual not less than twenty-one years of age;

(2) be honest and trustworthy, of good personal and business reputation and financially responsible;

(3) take and pass an examination as given by the superintendent, reasonably testing the knowledge of the applicant of the securities to be sold, the responsibilities of a salesperson relative thereto and competence of the applicant to act as a securities salesperson; and

(4) file with the superintendent along with application for license and thereafter maintain in force while so licensed, a surety bond issued by an authorized surety insurer or deposit of cash or cash-equivalent in lieu of the bond, in reasonable penal sum fixed by the superintendent but not less than ten thousand dollars ($10,000), for protection of the registrant, persons purchasing securities through the salesperson and the state of New Mexico and to assure compliance with law and the applicable regulations of the superintendent.

B. Procedure for application for license, examination of applicant, issuance, terms, duration and suspension or revocation of license and related matters shall be as provided by applicable provisions of Chapter 59A, Article 11 NMSA 1978. Fee for license and examination shall be as fixed in Section 59A-6-1 NMSA 1978.

C. This section shall not apply as to securities broker-dealers registered as such under the Securities Exchange Act of 1934, as amended, or as to securities the sale of which is underwritten (other than on a best efforts basis) by such a broker-dealer."

Chapter 272 Section 21

Section 21. Section 59A-40-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 692) is amended to read:

"59A-40-9. LICENSED AGENTS REQUIRED.--The insurer shall write business in New Mexico only through its resident United States agents duly appointed by it in writing and duly licensed by the superintendent under provisions of the Insurance Code applicable to insurance agents of authorized insurers. The appointment of agents shall specifically authorize the licensee to write for the Mexican insurer the insurance coverages as specified in Chapter 59A, Article 40 NMSA 1978."

Chapter 272 Section 22

Section 22. Section 59A-44-33 NMSA 1978 (being Laws 1989, Chapter 388, Section 33, as amended) is amended to read:

"59A-44-33. LICENSING OF AGENTS.--

A. Agents of societies shall be licensed in accordance with the applicable provisions of Chapter 59A, Articles 11 and 12 NMSA 1978 regulating the licensing, revocation, suspension or termination of license of agents, but shall not be subject to the provisions of Section 59A-12-26 NMSA 1978.

B. No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes or intends to devote fifty percent or more of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

C. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars ($50,000) or, in the case of any other kind of insurance that the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor shall be presumed to be devoting or intending to devote fifty percent of his time to the solicitation or procurement of insurance contracts for such society."

Chapter 272 Section 23

Section 23. Section 59A-47-30 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.29) is amended to read:

"59A-47-30. LICENSED AGENTS OR SOLICITORS REQUIRED--QUALIFICATIONS, LICENSING PROCEDURES AND CONDITIONS.--

A. Solicitation of subscriberships for a health care plan shall be made only by agents of such plan or solicitors of such agents, who are duly qualified, appointed and licensed as such under the Insurance Code. This provision shall not apply as to salaried officers or employees of health care plans who are visiting or instructing their licensed agents, and who do not receive any part of the commission for any business written by such agents with their assistance.

B. No person shall be appointed or licensed as a health care plan agent or solicitor unless qualified therefor as follows:

(1) is an individual at least eighteen years of age;

(2) has had, or will receive, reasonable experience or instruction in the health care plan for which license is applied;

(3) is be trustworthy and of good business reputation;

(4) intends to engage in a bona fide way in the business of the health care plan; and

(5) passes to the superintendent's satisfaction an examination for license as given by or under authorization of the superintendent.

C. A health care plan agent shall be appointed by and at any one time represent only one such plan.

D. Subject to the other provisions of this section, procedures for appointment and licensing such agents and solicitors, examination, issuance or denial of license, continuation or expiration, suspension, revocation or refusal to continue license and other applicable matters relating to such licensing and licenses shall be as provided as to licenses of agents and solicitors as to health insurance under Chapter 59A, Article 11

NMSA 1978. Fee for application for license and continuation of license shall be as specified in Section 59A-6-1 NMSA 1978, and neither fee shall be refundable."

Chapter 272 Section 24

Section 24. Section 59A-50-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 919) is amended to read:

"59A-50-13. REGISTERED REPRESENTATIVES REQUIRED--QUALIFICATIONS FOR REGISTRATION.--

A. No person shall be, act as or purport to be a representative of a motor club in this state unless then registered as such with the superintendent by the motor club.

B. To qualify for registration the applicant shall:

(1) be an individual not less than eighteen years of age;

(2) be of good personal and business reputation;

(3) not previously have been refused registration or had registration revoked;

(4) be suitable and competent to act as such representative; and

(5) intend in good faith to act and hold himself out as such a representative.

C. As part of an application for registration, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident registrant. The appointment is irrevocable and continues for so long as an action involving the nonresident registrant could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the nonresident registrant at his last address of record with the superintendent. Process served and copy forwarded as so provided constitutes personal service upon the nonresident registrant.

D. A nonresident registrant shall also file with the superintendent a written agreement to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the nonresident registrant at his last address of record with the superintendent, and that upon failure of the nonresident registrant to appear, the nonresident registrant consents to subsequent suspension, revocation or refusal of the superintendent to continue the license."

Chapter 272 Section 25

Section 25. Section 59A-51-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 931) is amended to read:

"59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for license as bail bondsman or solicitor pursuant to the provisions of Chapter 59A, Article 51 NMSA 1978 must not be law enforcement, adjudication or prosecution officials or their employees, attorneys-at-law, officials authorized to admit to bail, or state or county officers, and must be qualified as follows:

A. is an individual not less than eighteen years of age;

B. is a citizen of the United States;

C. if for license as bondsman must take and pass to the superintendent's satisfaction a written examination testing his knowledge and competence to engage in the bail bondsman business;

D. is of good personal and business reputation;

E. if to act as a property bondsman, must be financially responsible and provide the surety bond or deposit in lieu thereof as required in accordance with Section 59A-51-8 NMSA 1978;

F. if to act as a limited surety agent, must be appointed by an authorized surety insurer, subject to issuance of a license, and meet all applicable qualifications as for licensing as an agent of an insurer as stated in Section 59A-12-12 NMSA 1978; and

G. if for license as a solicitor, must have been so appointed by a licensed bail bondsman subject to issuance of the solicitor license."

Chapter 272 Section 26

Section 26. Section 59A-51-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 932) is amended to read:

"59A-51-5. APPLICATION FOR LICENSE.--

A. An individual desiring to be licensed as bail bondsman or solicitor under Chapter 59A, Article 51 NMSA 1978 shall file with the superintendent written application on a form as prescribed and furnished by the superintendent, together with application for qualifying examination if for bail bondsman license.

B. With application for license to act as property bondsman the applicant shall file with the superintendent his detailed financial statement under oath and a schedule of

charges and the rating plan proposed to be used in writing bail bonds. The schedule shall conform to rules and regulations promulgated by the superintendent.

C. Application for a solicitor's license must be endorsed by the appointing bail bondsman, who shall therein obligate himself to supervise the solicitor's activities in the bondsman's behalf.

D. The application shall be accompanied by a recent credential-sized full-face photograph of the applicant together with such additional proof of identity as the superintendent may reasonably require.

E. As part of an application for a license, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident licensee. The appointment is irrevocable and continues for so long as an action involving the nonresident licensee could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the nonresident licensee at his last address of record with the superintendent. Process served and copy forward as so provided constitutes personal service upon the nonresident licensee.

F. A nonresident licensee shall also file with the superintendent a written agreement to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the nonresident licensee at his last address of record with the superintendent, and that upon failure of the nonresident licensee to appear, the nonresident licensee consents to subsequent suspension, revocation or refusal of the superintendent to continue the license."

Chapter 272 Section 27

Section 27. Section 59A-55-24 NMSA 1978 (being Laws 1988, Chapter 125, Section 24) is amended to read:

"59A-55-24. DUTY OF AGENTS OR BROKERS TO OBTAIN LICENSE.--

A. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in New Mexico from a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code.

B. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance:

(1) in New Mexico for a purchasing group from an authorized insurer or a risk retention group chartered in a state, unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code;

(2) in New Mexico for any members of a purchasing group under a purchasing group's policy, unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code; or

(3) from an insurer not authorized to do business in New Mexico on behalf of a purchasing group located in this state, unless such person, firm, association or corporation is licensed as a surplus lines agent or excess line broker pursuant to the provisions of the New Mexico Insurance Code.

C. Every person, firm, association or corporation licensed pursuant to the provisions of the New Mexico Insurance Code on business placed with risk retention groups or written through a purchasing group shall inform each prospective insured of the provisions of the notice required by Section 59A-55-10 NMSA 1978 in the case of a purchasing group."

Chapter 272 Section 28

Section 28. Section 61-15-8 NMSA 1978 (being Laws 1931, Chapter 155, Section 7, as amended) is amended to read:

"61-15-8. EXEMPTIONS--FROM REGISTRATION.--

A. The following are exempt from the provisions of the Architectural Act:

(1) architects who have no established places of business in this state and who are not registered under the Architectural Act may act as consulting associates of an architect registered under the provisions of the Architectural Act, provided the architects are registered as architects in another jurisdiction; and

(2) architects acting solely as officers or employees of the United States or any interstate railroad system.

B. Nothing in the Architectural Act shall prevent a registered architect from employing non-registrants to work under the architects responsible charge."

Chapter 272 Section 29

Section 29. Section 61-15-9 NMSA 1978 (being Laws 1931, Chapter 155, Section 8, as amended) is amended to read:

"61-15-9. PROJECT EXEMPTIONS.--

A. The state and its political subdivisions are not exempt from the requirements of the Architectural Act.

B. A person who is not an architect may prepare building plans and specifications, unless the building plans and specifications involve public safety or health, but the work shall be done only on:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided, this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height which are appurtenant to buildings described in Paragraphs (1) and (2) of this subsection; or

(4) nonresidential buildings, as defined in the uniform building code, unless the building code official having jurisdiction has found that the submission of plans, drawings, specifications or calculations prepared and designed by an architect or engineer licensed by the state is necessary to obtain compliance with minimum standards governing the preparation of building plans and specifications adopted by the construction industries division of the regulation and licensing department. The construction industries division shall set, by regulation, minimum standards for preparation of building plans and specifications pursuant to this paragraph.

C. Nothing in the Architectural Act shall require the state or a political subdivision of the state to secure the services of an architect or engineer for a public work project that consists of repair, replacement or remodeling if the alteration does not affect structural or life safety features of a building and does not require the issuance of a building permit under any applicable code.

D. A New Mexico registered professional engineer who has complied with all the laws of New Mexico relating to the practice of engineering has a right to engage in the incidental practice, as defined by rule, of activities properly classified as architectural services; provided that the engineer does not hold himself out to be an architect or as performing architectural services; and further provided that the engineer performs only that part of the work for which the engineer is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting professional engineer is not qualified. The engineer shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an engineer's professional seal."

Chapter 272 Section 30

Section 30. Section 61-18A-11 NMSA 1978 (being Laws 1987, Chapter 252, Section 11) is amended to read:

"61-18A-11. QUALIFICATION OF MANAGER APPLICANTS.--The licensed manager to be actively in charge of a collection agency shall:

A. be a citizen of the United States;

B. have reached the age of majority;

C. not have been convicted of a felony or crime involving moral turpitude;

D. be a graduate of a high school or provide proof to the director that he is possessed of the equivalent of a high school education;

E. pass the examination required;

F. pay the examination fee to the director;

G. have been actively and continuously engaged or employed in the collection of accounts receivable for at least two of the five years next preceding the filing of the application; and

H. have a good credit record."

Chapter 272 Section 31

Section 31. Section 61-24B-5 NMSA 1978 (being Laws 1985, Chapter 151, Section 5) is amended to read:

"61-24B-5. EXEMPTIONS.--The following shall be exempt from the provisions of the Landscape Architects Act:

A. landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a landscape architect registered under the provisions of the Landscape Architects Act; provided that the nonresident landscape architect meets equivalent registration qualifications in his own state or country;

B. landscape architects acting solely as officers or employees of the United States or any interstate railroad system; and

C. landscape designers, land planners, agriculturalists, soil conservationists, agronomists, horticulturists, foresters, tree experts, arborists, gardeners, contract landscape caretakers, landscape nurserymen, graders or contractors, or cultivators of land and any person making plans for property owned by himself; provided that none of

these shall hold themselves out as landscape architects or use the term "landscape architect" without being registered pursuant to the provisions of the Landscape Architects Act.

Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of his licensure.

Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent the draftsmen, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the registered landscape architect or to prevent the employment of superintendents on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto or to prevent such superintendents from acting under the immediate personal supervision of registered landscape architects by whom the plans and specifications of any landscape architectural services were prepared."

Chapter 272 Section 32

Section 32. Section 61-27A-2 NMSA 1978 (being Laws 1993, Chapter 212, Section 2) is amended to read:

"61-27A-2. DEFINITIONS.--As used in the Private Investigators and Polygraphers Act:

A. "alarm company" means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;

B. "armored car company" means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;

C. "bodyguard" means a person who physically performs the mission of personal security of another individual;

D. "branch office" means an office physically located in New Mexico and managed, controlled or directed by a manager;

E. "client" means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;

F. "conviction" means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

G. "department" means the regulation and licensing department;

H. "licensee" means a person licensed as a:

(1) private investigator;

(2) private patrol operator; or

(3) polygraph examiner;

I. "manager" means an individual who:

(1) has the qualifications required of a licensee; and

(2) directs, controls or manages a private investigator or private patrol operator business for the owner of the business when the owner does not qualify for a license under the Private Investigators and Polygraphers Act;

J. "person" means any individual, firm, company, association, organization, partnership or corporation;

K. "polygraphy" means the employment of an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results;

L. "private investigator" means a person who for any consideration whatsoever engages in business or accepts employment to conduct an investigation for the purpose of obtaining information with reference to:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliation, association, transactions, acts, reputation or character of any person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties; or

(5) the securing of evidence to be used before any court, board, officer or investigating committee;

M. "private investigator employee" means an individual who is working under the license and bond of a private investigator;

N. "private patrol operator" or "operator of a private patrol service" means a person who for any consideration whatsoever agrees to:

(1) furnish or furnishes a uniformed or nonuniformed watchman, guard, patrolman or other person to protect property and any persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the service of a security guard, armored car company or security dog company.

A private patrol operator may not make any investigation except those that are incidental to the theft, loss, embezzlement, misappropriation or concealment of any property or any other item enumerated in the Private Investigators and Polygraphers Act that he has been hired or engaged to protect, guard or watch;

O. "security dog company" means a company that uses trained dogs with handlers to perform a security mission at a location; and

P. "security guard" means any individual who is an employee of a private patrol operator and employed to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts."

Chapter 272 Section 33

Section 33. Section 61-27A-6 NMSA 1978 (being Laws 1993, Chapter 212, Section 6) is amended to read:

"61-27A-6. REQUIREMENTS FOR LICENSURE.--

A. The department shall issue a license for a private investigator to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in investigative work or a level of experience determined to be sufficient by the department; and

(5) has not been convicted of a felony offense or a criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

B. The department shall issue a license for a private investigator manager to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) has passed a written examination as prescribed by the department;

(3) has at least three years' experience within the last five years in investigative work or a level of experience determined to be sufficient by the department;

(4) is of good moral character; and

(5) has not been convicted of a felony offense or a criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

C. The department shall issue a license for a private patrol operator to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in security work or a level of experience determined to be sufficient by the department; and

(5) has not been convicted of a felony offense or a criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

D. The department shall issue a license for a private patrol operator manager to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) has passed a written examination as prescribed by the department;

(3) has at least three years' experience within the last five years in security work or a level of experience determined to be sufficient by the department;

(4) is of good moral character; and

(5) has not been convicted of a felony offense or a criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

E. A manager's license is required when the owner of a private investigator or private patrol operator business does not qualify for a license under the Private Investigators and Polygraphers Act.

F. The department shall issue a security guard pocket card to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age; and

(2) is of good moral character.

G. The department shall issue a license for polygrapher to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) possesses a high school diploma or its equivalent;

(3) has not been convicted of a felony or misdemeanor involving moral turpitude; and

(4) has graduated from a polygraph examiners course approved by the department and:

(a) has completed a probationary operational competency period and passed an examination of ability to practice polygraphy; or

(b) has submitted proof of holding, for a minimum of two years immediately prior to the date of application, a current license to practice polygraphy in another jurisdiction whose standards equal or surpass those of New Mexico."

Chapter 272 Section 34

Section 34. Section 61-27A-10 NMSA 1978 (being Laws 1993, Chapter 212, Section 10) is amended to read:

"61-27A-10. OPERATION OF BUSINESS--MANAGER REQUIRED.--

A. Each business providing private investigator or private patrol operator services in New Mexico shall be operated under the direction, control, charge or management of a licensee; provided that the business shall be under the direction, control, charge or management of a manager if the owner of the business does not qualify for a license under the Private Investigators and Polygraphers Act.

B. A licensee shall not conduct a business under a fictitious name until he has obtained the written authorization of the department. The department shall not authorize the use of a fictitious name that is so similar to the name of a public officer or agency or to the name used by another licensee that the public may be confused or misled by it.

C. A licensee shall at all times be legally responsible for the good business conduct of each of his employees, including his manager.

D. Each licensee shall maintain a record containing information relative to his employees as may be prescribed by the department, and the records may be subject to inspection.

E. Except as otherwise provided by the Private Investigators and Polygraphers Act, every employee of a licensee shall be registered by the licensee with the department within seven days of employment; provided, however, a licensee may hire temporary employees for periods of time not to exceed five days for special celebrations, parades or similar events without those employees being registered. The provisions of this subsection shall not be used to circumvent the registration of long-term employees.

F. A person registered under the Private Investigators and Polygraphers Act shall notify the department in writing within thirty days of each change in his employment. If a person ceases to be employed by a licensee, the person shall notify the department in writing within thirty days and shall surrender his registration card to the department.

G. A manager duly licensed under the Private Investigators and Polygraphers Act need not register as an employee.

H. Employees of a licensee who are engaged exclusively in stenographic, typing, filing, clerical or other activities that do not constitute the work of a private investigator or private patrol officer are not required to register.

I. A person shall not act as a manager until he is licensed under the Private Investigators and Polygraphers Act. If a manager ceases to be connected with a licensee, the licensee shall notify the department in writing within thirty days from the cessation. If the licensee fails to notify the department within the thirty-day period, his license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement and payment of the reinstatement fee."

Chapter 272 Section 35

Section 35. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a real estate broker or salesperson in a manner that safeguards the interests of the public.

B. Each applicant for a broker's license shall be a legal resident of the United States, have reached the age of majority and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico. Each applicant for a real estate broker's license shall:

(1) have performed actively as a real estate salesperson for at least twenty-four months out of the preceding thirty-six months immediately prior to filing application and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission;

(2) furnish the commission a certificate that he has completed successfully one hundred eighty classroom hours of instruction in basic real estate courses approved by the commission;

(3) furnish the commission a certificate that he is a duly licensed real estate broker in good standing in another state, providing he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission; or

(4) furnish the commission satisfactory proof of his equivalent experience in an activity closely related to or associated with real estate and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission.

C. Each applicant for a salesperson's license shall be a legal resident of the United States, have reached the age of majority and shall furnish the commission a certificate that he has completed successfully sixty classroom hours of instruction in basic real estate courses approved by the commission.

D. The commission shall require information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Corporations, partnerships or associations shall be entitled to hold a broker's license issued in the name of the corporation, partnership or association, provided at least one member of the partnership or association or one officer or employee of a corporation who actively engages in the real estate business first secures a broker's license. The license shall be issued in the name of the corporation, partnership or association, naming the partner, associate, officer or employee as qualifying broker for the corporation, partnership or association."

Chapter 272 Section 36

Section 36. Section 61-29-14 NMSA 1978 (being Laws 1959, Chapter 226, Section 13, as amended) is amended to read:

"61-29-14. NONRESIDENT BROKERS.--No application for issuance of a license or renewal of an existing broker's license shall be accepted from a nonresident applicant who is a resident of another state which does not extend the privilege of licensure to real estate brokers licensed in New Mexico. A qualifying nonresident may become a real estate broker by conforming to all the conditions of Chapter 61, Article 29 NMSA 1978.

In its discretion, the commission may recognize, in lieu of the recommendations and certificates required to accompany an application for a broker's license, the broker's license issued to a nonresident in another state, provided the other state extends the privilege of licensure to real estate brokers licensed in New Mexico. The license shall be issued upon payment of the license fee, verification that the applicant has complied with his resident state's current education requirements, of which ninety classroom hours for a nonresident broker must be approved by the New Mexico real estate commission, and the filing by the applicant with the commission of a certified copy of the applicant's license issued by the other state, provided that:

A. the applicant shall have maintained an active place of business in the state by which he is licensed and shall pass the written examination required by Section 61-29-10 NMSA 1978;

B. the applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this state on the commission, the consent stipulating and agreeing that such service of process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in New Mexico. The instrument containing the consent shall be duly acknowledged and, if the applicant is a corporation or association, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to execute the instrument. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed; and

C. the applicant shall file a bond in form and content the same as is required of resident applicants under Chapter 61, Article 29 NMSA 1978."

HOUSE BILL 807, AS AMENDED

CHAPTER 273

RELATING TO PUBLIC ASSISTANCE; AMENDING THE NEW MEXICO WORKS ACT.

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

Chapter 273 Section 1

Section 1. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3) is amended to read:

"27-2B-3. DEFINITIONS.--As used in the New Mexico Works Act:

A. "benefit group" means a group of people that includes at least one dependent child living with his parent, legal guardian or relative within the fifth degree of consanguinity; or a pregnant woman;

B. "cash assistance" means cash payments funded by the temporary assistance for needy families block grant pursuant to the federal act and by state funds;

C. "department" means the human services department;

D. "dependent child" means a natural or adopted child or ward who is seventeen years of age or younger or a household group member who is eighteen years of age and is enrolled in high school;

E. "director" means the director of the income support division of the department;

F. "earned income" includes cash or payment in kind that is received as wages from employment or payment in lieu of wages; earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services; and all other income not classified as unearned income;

G. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

H. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

I. "household group" means a group of people that consists of a benefit group and any other person who resides in a household, regardless of whether they are related or have a legal support responsibility for a member of the benefit group, but does not include:

(1) landlords;

(2) tenants; or

(3) members of a registered nonprofit organization or church who provide shelter to a benefit group through a program sponsored by the nonprofit organization or church;

J. "immigrant" means alien as defined in the federal act;

K. "landlord" means the owner of an estate in land or a rental property who has leased it to another person called the tenant;

L. "parent" means natural parent, adoptive parent, stepparent or legal guardian;

M. "participant" means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority;

N. "person" means an individual;

O. "secretary" means the secretary of the department;

P. "services" includes child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment;

Q. "tenant" means a person who pays rent for the use and occupancy of real property owned by a landlord; and

R. "unearned income" includes old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; and similar kinds of income."

Chapter 273 Section 2

Section 2. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and Laws 1998, Chapter 9, Section 4) is amended to read:

"27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--REVIEW PERIODS.--

A. Application for cash assistance or services shall be made to the department's county office in the county or district in which an applicant resides. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant with whom a

dependent child resides and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other household group members have at the time of the filing of the application and other information required by the department.

B. Application for expedited food stamps shall be made to the department's county office in the county or district in which an applicant resides. The department shall process the application for expedited food stamps within twenty-four hours after the application is made.

C. At the time of application for cash assistance and services, an applicant shall identify household group members who are to be counted in the benefit group. Once an application is approved, the participant shall advise the department if there are any changes in the membership of the household group or benefit group.

D. No later than forty-five days after an application is filed, the department shall provide to an applicant a resource planning session to ascertain his immediate needs, assess financial and nonfinancial options, make referrals and act on the application.

E. No later than five days after an application is approved, the department shall provide reimbursement for child care.

F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. Within fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

H. After the initial assessment of skills, the department shall work with the participant to develop an individual responsibility plan that:

(1) sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) sets forth obligations of the participant that may include a requirement that the participant attend school, maintain certain grades and attendance, keep his school-age children in school, immunize his children or engage in other activities that will help the participant become and remain employed;

(3) is designed to the greatest extent possible to move the participant into whatever employment the participant is capable of handling and to provide additional services as necessary to increase the responsibility and amount of work the participant will handle over time;

(4) describes the services the department may provide so that the participant may obtain and keep employment; and

(5) may require the participant to undergo appropriate substance abuse treatment.

I. The participant and a representative of the department shall sign the participant's individual responsibility plan.

J. The participant shall also sign a participation agreement that designates the number of hours that he must participate in work activities to meet participation standards.

K. The department shall review the current financial eligibility of a benefit group when the department reviews food stamp eligibility.

L. The department shall meet semi-annually with a participant to review and revise his individual responsibility plan.

M. The department shall develop a complaint procedure to address issues pertinent to the delivery of services and other issues relating to a participant's individual responsibility plan."

Chapter 273 Section 3

Section 3. Section 27-2B-12 NMSA 1978 (being Laws 1998, Chapter 8, Section 12 and Laws 1998, Chapter 9, Section 12) is amended to read:

"27-2B-12. SERVICES.--Subject to the availability of federal and state funds, a benefit group that is not receiving cash assistance but has an income less than one hundred percent of the federal poverty guidelines may be eligible to receive services."

SENATE BILL 115, AS AMENDED

CHAPTER 274

RELATING TO EDUCATIONAL RETIREMENT; COMPLYING WITH FEDERAL INTERNAL REVENUE CODE PROVISIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 274 Section 1

Section 1. A new section of the Educational Retirement Act is enacted to read:

"EDUCATIONAL RETIREMENT--QUALIFIED EXCESS BENEFIT.--The educational retirement board, by rule, may establish and maintain a qualified excess benefit arrangement under Section 415(m) of the United States Internal Revenue Code of 1986 for employees hired before July 1, 1999. The amount of annual benefit that would be payable but for the limitation imposed by Section 415 of the United States Internal Revenue Code of 1986 to an employee hired before July 1, 1999 shall be paid from a qualified excess benefit arrangement established and maintained pursuant to this section."

Chapter 274 Section 2

Section 2. Section 22-11-21.2 NMSA 1978 (being Laws 1995, Chapter 148, Section 2) is amended to read:

"22-11-21.2. SALARY CALCULATION--LIMITATIONS.--In establishing a member's average annual salary for determination of retirement benefits, salary in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member or participant of the educational retirement plan or alternative retirement plan prior to the first plan year beginning after December 31, 1995. For a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, the limitation on compensation shall not be in excess of the member's base salary as specified in the member's annual faculty contract or the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, whichever is less."

Chapter 274 Section 3

Section 3. Section 22-11-47 NMSA 1978 (being Laws 1991, Chapter 118, Section 5) is amended to read:

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

A. Beginning October 1, 1991, any employee who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member.

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

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

D. Notwithstanding the provisions of Subsections A through C of this section, a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, who does not elect to participate in the alternative retirement plan and whose base salary, as specified in the member's annual faculty contract, does not exceed the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, in any contract year shall become a participant in the alternative retirement plan with respect to any amount by which the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, or the member's total salary, whichever is less, exceeds the member's base salary. Those members shall be deemed to be both members of the educational retirement plan and participants in the alternative retirement plan."

SENATE BILL 278, AS AMENDED

CHAPTER 275

RELATING TO EDUCATION; PROVIDING FOR THE EXPENDITURE OF CERTAIN FEDERAL REVENUE FOR CAPITAL OUTLAY; CHANGING THE PERCENTAGE OF LOCAL REVENUE CREDIT CALCULATED IN THE STATE EQUALIZATION GUARANTEE DISTRIBUTION; REQUIRING THE USE OF PRIOR YEAR AVERAGE ENROLLMENT COUNTS ON CERTAIN DAYS FOR THE CALCULATION OF PROGRAM UNITS FOR DISTRIBUTION OF THE STATE EQUALIZATION FUNDS.

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

Chapter 275 Section 1

Section 1. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--DEFINITIONS--DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents ($.50) to each one thousand dollars ($1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act. The school district shall budget and expend twenty percent of the total revenue receipts for capital outlay as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978.

C. "Federal revenue", as used in this section, means receipts to the school district, excluding amounts which, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978. The school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978; and

(2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid". The school district shall budget and expend twenty percent of the grant receipts for capital outlay as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978.

D. To determine the amount of the state equalization guarantee distribution, the state superintendent shall:

(1) effective July 1, 1999 calculate the number of program units to which each school district is entitled using the basic program membership of the fortieth day of the prior year for all programs; provided that special education program units shall be calculated using the membership in special education programs on December 1 of the prior year; effective July 1, 2000, calculate the number of program units to which each school district is entitled using an average of the membership on the fortieth, eightieth and one hundred twentieth days of the prior year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using the basic program membership on an appropriate date established by the state board; or

(3) calculate the number of program units to which a school district with a basic program MEM of two hundred or less is entitled by using the basic program membership on the

fortieth day of either the prior or the current year, whichever is greater; provided that special education program units shall be calculated using the membership in special education programs on December 1 of either the prior or the current year; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection; and

(7) deduct the total amount of guaranteed energy savings contract payments that the state superintendent determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) and (7) of Subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund."

SENATE BILL 418, AS AMENDED

CHAPTER 276

RELATING TO LIQUOR LICENSING; ESTABLISHING A NEW CATEGORY OF NONRESIDENT LICENSE FEE; AMENDING A SECTION OF THE NMSA 1978.

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

Chapter 276 Section 1

Section 1. Section 60-6A-15 NMSA 1978 (being Laws 1981, Chapter 39, Section 32, as amended) is amended to read:

"60-6A-15. LICENSE FEES.--Every application for the issuance or renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

A. manufacturer's license as a distiller, except a brandy manufacturer, three thousand dollars ($3,000);

B. manufacturer's license as a brewer, three thousand dollars ($3,000);

C. manufacturer's license as a rectifier, one thousand fifty dollars ($1,050);

D. wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars ($2,500);

E. wholesaler's license to sell spirituous liquors and wine for resale only, one thousand seven hundred fifty dollars ($1,750);

F. wholesaler's license to sell spirituous liquors for resale only, one thousand five hundred dollars ($1,500);

G. wholesaler's license to sell beer and wine for resale only, one thousand five hundred dollars ($1,500);

H. wholesaler's license to sell beer for resale only, one thousand dollars ($1,000);

I. wholesaler's license to sell wine for resale only, seven hundred fifty dollars ($750);

J. retailer's license, one thousand two hundred fifty dollars ($1,250);

K. dispenser's license, one thousand two hundred fifty dollars ($1,250);

L. canopy license, one thousand two hundred fifty dollars ($1,250);

M. restaurant license, one thousand dollars ($1,000);

N. club license, one thousand two hundred fifty dollars ($1,250);

O. wine bottler's license to sell to wholesalers only, five hundred dollars ($500);

P. public service license, one thousand two hundred fifty dollars ($1,250);

Q. nonresident licenses, for a total billing to New Mexico wholesalers:

(1) in excess of:

$3,000,000
annually..$10,500;

1,000,000
annually...5,250;

500,000
annually..3,750;

200,000
annually...2,700;

100,000
annually...1,800;

and

50,000
annually..900;

and

(2) of $50,000 or
less...$300;

R. wine wholesaler's license, for persons with sales of five thousand gallons of wine per year or less, twenty-five dollars ($25.00), and for persons with sales in excess of five thousand gallons of wine per year, one hundred dollars ($100); and

S. beer bottler's license, two hundred dollars ($200)."

SENATE BILL 484

CHAPTER 277

RELATING TO ALCOHOLIC BEVERAGE SERVERS; RE-CREATING A SERVER EDUCATION PROGRAM; ESTABLISHING PENALTIES AND FINES; ENACTING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 277 Section 1

Section 1. Section 60-6C-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 102, as amended) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL.--

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as he may find are just, in his discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party.

C. For purposes of this section, "licensee" includes a person issued a server permit pursuant to the Alcohol Server Education Article of the Liquor Control Act."

Chapter 277 Section 2

Section 2. A new section of the Liquor Control Act is enacted to read:

"60-6D-11. ARTICLE DESIGNATION--ALCOHOL SERVER EDUCATION.--Chapter 60, Article 6D NMSA 1978 may be cited as the "Alcohol Server Education Article of the Liquor Control Act"."

Chapter 277 Section 3

Section 3. A new section of the Liquor Control Act is enacted to read:

"60-6D-12. PURPOSE.--The purpose of Chapter 60, Article 6D NMSA 1978 is to:

A. enhance the professionalism of persons employed in the alcoholic beverage service industry;

B. establish a program for servers, licensees and their lessees that includes the study of:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) state law concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(3) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(4) methods of identifying false drivers' licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(5) prevention of fetal alcohol syndrome;

C. reduce the number of persons who drive while under the influence of intoxicating liquor and mitigate the physical and property damage caused by that behavior; and

D. reduce the frequency of alcohol-related birth defects."

Chapter 277 Section 4

Section 4. A new section of the Liquor Control Act is enacted to read:

"60-6D-13. DEFINITIONS.--As used in Chapter 60, Article 6D NMSA 1978:

A. "director" means the director of the division;

B. "division" means the alcohol and gaming division of the regulation and licensing department;

C. "licensee" means a person issued a license pursuant to the provisions of the Liquor Control Act to sell, serve or dispense alcoholic beverages for consumption and not for resale;

D. "program" means an alcohol server education course and examination approved by the director to be administered by providers;

E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program;

F. "server" means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, including persons who manage, direct or control the sale or service of alcohol. "Server" does not include officers of a corporate licensee or lessee who do not manage, direct or control the sale or service of alcohol; and

G. "server permit" means an authorization issued by the director for a person to be employed or engaged to sell, serve or dispense alcoholic beverages."

Chapter 277 Section 5

Section 5. A new section of the Liquor Control Act is enacted to read:

"60-6D-4. SERVER PERMITS REQUIRED--ALCOHOL SERVICE OR SALES.--No person shall be employed as a server on a licensed premises unless that person has

obtained a server permit pursuant to the provisions of Chapter 60, Article 6D NMSA 1978."

Chapter 277 Section 6

Section 6. A new section of the Liquor Control Act is enacted to read:

"60-6D-15. PROGRAMS REQUIRED--APPROVAL BY DIRECTOR--CONTENT OF PROGRAM--SURETY BOND.--

A. The director shall have the authority to approve programs offered by providers.

B. The program curriculum shall include the following subjects:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) the effect alcohol has on a person when used in combination with legal or illegal drugs;

(3) state laws concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(4) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(5) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(6) the incidence of alcohol-related birth defects.

C. The director shall require each provider to post a surety bond in the amount of five thousand dollars ($5,000). The director may, in the director's discretion, allow a provider to submit other evidence of financial responsibility satisfactory to the director in lieu of posting a surety bond in the amount of five thousand dollars ($5,000)."

Chapter 277 Section 7

Section 7. A new section of the Liquor Control Act is enacted to read:

"60-6D-16. SERVER PERMITS--FAILURE TO PRODUCE PROOF.--

A. Every licensee shall maintain on the licensed premises copies of the server permits of the licensee, his lessee, if any, and each server then employed by the licensee or lessee at all times and make copies available to the director and to the agents or employees of the department of public safety upon request.

B. Failure to produce a copy of a server permit is prima facie evidence that a server permit has not been issued and shall subject the licensee to fines and penalties as determined by rule adopted by the director."

Chapter 277 Section 8

Section 8. A new section of the Liquor Control Act is enacted to read:

"60-6D-17. SERVER PERMITS--ISSUANCE--OWNERSHIP--FEES.--

A. The director shall issue a server permit to each applicant who obtains a certificate of program completion and provides such other information as may be required by the director. The director may, in the director's discretion, issue temporary server permits if circumstances warrant such issuance.

B. Server permits shall not be issued to graduates of programs that are not approved by the director.

C. A server permit is the property of the server to whom it is issued.

D. The director may charge a fee for the issuance of the server permit.

E. Server permits shall be valid for a period of five years from the date the server permit was issued.

F. A certificate of completion of an alcohol server education program issued pursuant to previous law shall remain valid until the date of its expiration."

Chapter 277 Section 9

Section 9. A new section of the Liquor Control Act is enacted to read:

"60-6D-18. SERVER PERMIT--SUSPENSION-- REVOCATION-- ADMINISTRATIVE FINES--PENALTIES.-- In addition to any other penalties available, the following penalties may be imposed for sales to minors or intoxicated persons in violation of the provisions of the Liquor Control Act or rules of the division:

A. The director may suspend a server's server permit for a period of thirty days or fine the server in an amount not to exceed five hundred dollars ($500), or both, when he finds that the server is guilty of a first offense of selling, serving or dispensing an alcoholic beverage to an intoxicated person in violation of Section 60-7A-16 NMSA 1978 or to a minor in violation of Section 60-7B-1 NMSA 1978;

B. The director shall suspend a server's server permit for a period of one year when he finds that the server is guilty of a second offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978

or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incident giving rise to his first offense;

C. The director shall permanently revoke a server's server permit when he finds that the server is guilty of a third offense of selling, serving or dispensing alcoholic beverages to intoxicated persons in violation of Section 60-7A-16 NMSA 1978 or to minors in violation of Section 60-7B-1 NMSA 1978 arising separately from the incidents giving rise to his first and second offenses.

D. No person whose server permit is suspended or revoked pursuant to the provisions of this section may be a server of alcoholic beverages on a licensed premises during the period of suspension or revocation.

E. No person whose server permit is suspended may serve alcoholic beverages on or after the date of suspension unless the person obtains a new server permit in accordance with the provisions of Article 6D of Chapter 60.

F. Nothing in this act shall be interpreted to waive any license holder's liability that may arise pursuant to the provisions of this act."

Chapter 277 Section 10

Section 10. A new section of the Liquor Control Act is enacted to read:

"60-6D-19. ALCOHOL SERVER EDUCATION; REQUIRED FOR LICENSE RENEWAL.--A licensee seeking renewal of a license shall submit to the division, as a condition of license renewal, proof that the licensee, his lessee, if any, and each server employed by the licensee or lessee during the prior licensing year have or had valid server permits at all times that alcoholic beverages were sold, served or dispensed."

Chapter 277 Section 11

Section 11. A new section of the Liquor Control Act is enacted to read:

"60-6D-20. ADMINISTRATIVE PROCEEDINGS--HEARINGS.--

A. Hearings for the suspension or revocation of any server's server permit or for imposing a fine on the server, or both, shall be conducted in accordance with the provisions of Sections 60-6C-2 through 60-6C-6 NMSA 1978.

B. The director may suspend or revoke a server permit or impose a fine on a server, or impose a combination of those penalties, only if the server violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978."

Chapter 277 Section 12

Section 12. A new section of the Liquor Control Act is enacted to read:

"60-6D-21. ADVISORY COMMITTEE CREATED--MEMBERS --MEETINGS.--

A. The "alcohol server education advisory committee" is created and is administratively attached to the division. The membership of the committee shall consist of:

(1) the director;

(2) the secretary of public safety or his designee;

(3) the secretary of health or his designee;

(4) the chief of the traffic safety bureau of the state highway and transportation department or his designee;

(5) three representatives from the retail liquor industry;

(6) a representative from the wholesale liquor industry;

(7) a representative from the insurance industry; and

(8) a representative from a nonprofit organization whose primary purpose is to reduce drunk driving in New Mexico.

B. The representative members of the committee shall be selected by the director. The director shall serve as chair of the committee.

C. The committee shall meet as often as necessary to conduct business, but no less than twice a year. Meetings shall be called by the director. Five members shall constitute a quorum."

Chapter 277 Section 13

Section 13. A new section of the Liquor Control Act is enacted to read:

"60-6D-22. ADVISORY COMMITTEE--DUTIES.--The alcohol server education advisory committee shall assist the division with development of:

A. standards, course requirements and materials for the program;

B. procedures attendant to the program;

C. certification standards for providers and instructors; and

D. certification of alcohol server education programs that meet the minimum standards of the alcohol server education advisory committee."

Chapter 277 Section 14

Section 14. Section 60-7A-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 78, as amended) is amended to read:

"60-7A-12. OFFENSES BY DISPENSERS, CANOPY LICENSEES, RESTAURANT LICENSEES, GOVERNMENTAL LICENSEES OR THEIR LESSEES AND CLUBS.--It is a violation of the Liquor Control Act for any dispenser, canopy licensee, restaurant licensee, governmental licensee or its lessee or club to:

A. receive any alcoholic beverages for the purpose of or with the intent of reselling the same from any person other than one duly licensed to sell alcoholic beverages to dispensers for resale;

B. sell, possess for the purpose of sale or to bottle any bulk wine for sale other than by the drink for immediate consumption on his licensed premises;

C. directly, indirectly or through any subterfuge own, operate or control any interest in any wholesale liquor establishment or liquor manufacturing or wine bottling firm; provided that this section shall not prevent a dispenser from owning an interest in any legal entity, directly or indirectly or through an affiliate, that wholesales alcoholic beverages and that operates or controls an interest in an establishment operating pursuant to the provisions of Subsection B of Section 60-7A-10 NMSA 1978;

D. sell or possess for the purpose of sale any alcoholic beverages at any location or place except his licensed premises or the location permitted pursuant to the provisions of Section 60-6A-12 NMSA 1978;

E. employ or engage a person to sell, serve or dispense alcoholic beverages if the person has not been issued a server permit; or

F. employ or engage a person to sell, serve or dispense alcoholic beverages during a period when the server permit of that person is suspended or revoked."

Chapter 277 Section 15

Section 15. REPEAL.--Sections 60-6D-1 through 60-6D-8 NMSA 1978 (being Laws 1993, Chapter 68, Sections 28 through 35, as amended) are repealed.

Chapter 277 Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 485, AS AMENDED

CHAPTER 278

RELATING TO MUNICIPAL ELECTIONS; AMENDING AND ENACTING SECTIONS OF THE MUNICIPAL ELECTION CODE; PROVIDING PENALTIES.

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

Chapter 278 Section 1

Section 1. Section 3-8-2 NMSA 1978 (being Laws 1985, Chapter 208, Section 10, as amended) is amended to read:

"3-8-2. DEFINITIONS.--

A. The definitions in Section 3-1-2 NMSA 1978 shall apply to the Municipal Election Code in addition to those definitions set forth in the Municipal Election Code.

B. As used in the Municipal Election Code:

(1) "absentee voter list" means the list prepared by the municipal and county clerks of those persons who have been issued an absentee ballot;

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes early voting ballots, marksense ballots, absentee ballots, ballot faces, emergency paper ballots and paper ballots used in lieu of voting machines;

(3) "ballot face" means the material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking and a statement of the proposed questions to be voted upon;

(4) "clerk" or "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(5) "county clerk" means the clerk of the county or his designee within which the municipality is located;

(6) "election returns" means all certificates of the precinct board, including the certificate showing the total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine printed returns, emergency paper ballots, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine printed returns;

(7) "emergency paper ballot" means the paper ballot used when a voting machine becomes disabled so that a voter is unable to cast a vote for all of the candidates and questions of the voter's choice and have such vote correctly recorded by the voting machine and when no substitute voting machine is available;

(8) "marksense ballot" means a paper ballot card used on an optical-scan vote-tabulating machine;

(9) "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of early voting, absentee voting, counting and tallying of early voting ballots or absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

(10) "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

(11) "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(12) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(13) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(14) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns; and

(15) "recount" pertains to emergency paper ballots, paper ballots used in lieu of voting machines, early voting ballots and absentee ballots and means a retabulation and retallying of individual ballots."

Chapter 278 Section 2

Section 2. Section 3-8-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-5, as amended) is amended to read:

"3-8-7. MUNICIPAL CLERK--COUNTY CLERK--ELECTION DUTIES.--

A. The municipal clerk shall:

(1) administer the municipal election;

(2) with the consent of the governing body, secure the necessary polling places;

(3) see that all necessary supplies and equipment are present at each polling place prior to the opening of the polls on the day of the election;

(4) certify voting machines;

(5) conduct an election school for precinct board members as required in Section 3-8-21 NMSA 1978;

(6) keep the office of the municipal clerk open on election day for the purpose of receiving ballot boxes, election returns and materials until all election returns and materials are received; and

(7) within fifteen days of the holding of any municipal election, forward to the county clerk a listing of all individuals voting in the municipal election.

B. Within fifteen days of the adoption of the election resolution, the municipal clerk shall request in writing from the county clerk the registered voter lists and signature rosters containing only the qualified electors eligible to vote in the municipal election. The county clerk shall provide to the municipal clerk a printed registered voter list and the voter registration information in compatible electronic format containing only the qualified electors eligible to vote in the municipal election twenty days prior to the election. At least seven days prior to every municipal election, the county clerk shall furnish to the municipal clerk the registered voter list and signature roster containing only the qualified electors eligible to vote in the municipal election. A municipal clerk shall not amend, add or delete any information to or from the registered voter list except as otherwise provided by law. The registered voter list shall constitute the registration list for the municipal election. The registered voter list does not have to be returned to the county clerk. The municipality shall bear the reasonable cost of preparation of the voter lists, signature rosters and voter registration in electronic format but in no case in an amount that exceeds the actual cost to the county."

Chapter 278 Section 3

Section 3. Section 3-8-15 NMSA 1978 (being Laws 1985, Chapter 208, Section 23) is amended to read:

"3-8-15. EMERGENCY PAPER BALLOTS--WHEN USED--AMOUNT REQUIRED--SAFEGUARDS.--

A. When voting machines are used in an election and one or more machines becomes disabled so that a voter is unable to vote for the candidates or the questions of the voter's choice, or both, and have such vote correctly recorded by the voting machine

and when no substitute voting machine is available, then emergency paper ballots shall be used.

B. The municipal clerk shall supply to each polling place a quantity of emergency paper ballots equal to ten percent of the total number of qualified electors in the precinct or consolidated precinct. Such ballots shall only be used as allowed in the Municipal Election Code.

C. Emergency paper ballots are official ballots and shall meet the same requirements and safeguards as all other official ballots."

Chapter 278 Section 4

Section 4. Section 3-8-18 NMSA 1978 (being Laws 1985, Chapter 208, Section 26, as amended) is amended to read:

"3-8-18. ELECTION SUPPLIES.--

A. If paper ballots are to be used in lieu of voting machines, then the municipal clerk shall order to be printed paper ballots and sample paper ballots no later than 5:00 p.m. on the fifty-third day preceding the day of the election. The ballots shall be delivered to the clerk not later than the eighth day preceding the day of the election.

B. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

(1) order absentee ballots and early voting material;

(2) order ballot faces, sample voting machine ballots and emergency paper ballots, if voting machines are to be used; and

(3) order all other election supplies necessary for the conduct of the election.

C. Absentee ballots, emergency paper ballots, early voting materials, ballot faces for the machines and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election."

Chapter 278 Section 5

Section 5. Section 3-8-19 NMSA 1978 (being Laws 1971, Chapter 306, Section 8, as amended) is amended to read:

"3-8-19. PRECINCT BOARDS--APPOINTMENTS--COMPENSATION.--

A. In order to qualify as a member of a precinct board, a person shall:

(1) be a resident qualified elector of the municipality and a resident of the precinct or consolidated precinct within the jurisdiction of the precinct board. However, if there is a shortage or absence of precinct board members in certain precincts or consolidated precincts, a person who is a resident qualified elector of the municipality and a nonresident of the precinct or consolidated precinct may be appointed;

(2) be able to read and write;

(3) have the necessary capacity to carry out the functions of the office with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. No person shall be qualified for appointment or service on a precinct board if that person is a:

(1) candidate for any municipal office;

(2) spouse, parent, child, brother or sister of any candidate to be voted for at the election;

(3) sheriff, deputy sheriff, marshal, deputy marshal or state or municipal policeman;

(4) spouse, parent, child, brother or sister of the municipal clerk or any deputy or assistant municipal clerk; or

(5) municipal clerk or deputy or assistant municipal clerk.

C. Not less than thirty-five days before the day of the municipal election, the governing body shall appoint a precinct board for each polling place. The precinct board shall consist of no fewer than three members. Each board shall have no fewer than three election judges and no fewer than two election clerks. Election judges may also be appointed as election clerks. Not less than two alternates shall be appointed who shall become either election judges or election clerks or both as the need arises. On the thirty-fifth day before the day of the election, the municipal clerk shall post and maintain in the clerk's office until the day of the election the names of the election judges, election clerks and alternates for each polling place. The posting of the names of the election judges, election clerks and alternates for each polling place may be proved by an affidavit signed by the municipal clerk. The municipal clerk shall, by mail, notify each person appointed, request a written acceptance and keep a record of all notifications and acceptances. The notice shall state the date by which the person must accept the appointment. If any person appointed to a precinct board, or as an alternate, fails to accept an appointment within seven days after the notice is sent, the position shall be deemed vacant and the position shall be filled as provided in this section.

D. The county clerk shall furnish upon request of the municipal clerk the names and addresses of qualified precinct board members for general elections, and such precinct board members may be appointed as precinct board members for municipal elections.

E. The municipal clerk shall appoint a qualified elector as a precinct board member to fill any vacancy that may occur between the day when the list of precinct board members is posted and the day of the election. If a vacancy occurs on the day of the election, the precinct board members present at the polling place may appoint by a majority vote a qualified elector to fill the vacancy. If the vacancy was filled after the date of the election school, that person need not attend an election school in order to validly serve on the precinct board.

F. Members of a precinct board shall be compensated for their services at the rate provided in Section 1-2-16 NMSA 1978 for the day of the election. The governing body may authorize payment to alternates who are required by the precinct board or municipal clerk to stand by on election day at the rate of not more than twenty dollars ($20.00) for the day of the election.

G. Compensation shall be paid within thirty days following the date of election."

Chapter 278 Section 6

Section 6. Section 3-8-29 NMSA 1978 (being Laws 1985, Chapter 208, Section 37, as amended) is amended to read:

"3-8-29. REGULAR MUNICIPAL ELECTION--BALLOTS.--

A. At 5:01 p.m. on the fifty-fourth day preceding the election, in the presence of the certified candidates or their authorized representatives who desire to be present, the municipal clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. If a candidate or an authorized representative fails to appear, then the municipal clerk shall draw a lot for the absent candidate.

B. The ballot shall first set forth candidates running for executive office (mayor), if any; then candidates running for legislative office (councilors, trustees, commissioners), if any; and finally candidates running for judicial office (municipal judge), if any. For each office to be filled, the ballot shall contain:

(1) the office to be filled and its term;

(2) the names of the candidates running for office exactly as shown on the candidate's declaration of candidacy and in the order determined by the drawing by lot;

(3) a space for a qualified elector to write in the name of one declared write-in candidate, if any, per position to be filled; and

(4) any necessary reference to districts, positions or other similar official designations for office.

C. The only reference to a candidate for office to be placed on a ballot is the candidate's name as it appears on the candidate's declaration of candidacy. No ticket designations or party affiliations shall be shown on the ballot. Municipal elections shall be nonpartisan.

D. If it appears to the municipal clerk that the name of two or more candidates for any office are the same or so similar as to tend to confuse the voter as to the candidates' identities, the occupation and address of each such candidate shall be printed immediately under the candidate's name on the ballot.

E. The municipal clerk shall place on the ballot any question in the order designated by the governing body."

Chapter 278 Section 7

Section 7. Section 3-8-31 NMSA 1978 (being Laws 1971, Chapter 306, Section 10, as amended) is amended to read:

"3-8-31. REGULAR MUNICIPAL ELECTION--CHALLENGERS--WATCHERS--OBSERVERS.--

A. Upon petition filed with the municipal clerk by an unopposed candidate or by both candidates for a municipal office, if only two candidates are running for the office, or by a majority of the candidates for a municipal office, if more than two candidates are running for the office, those candidates may:

(1) appoint one person as a challenger and one alternate for each polling place in the municipal election; and

(2) appoint one person as a watcher and one alternate for each polling place in the municipal election.

B. The petition appointing a challenger and watcher and alternates shall be filed not later than 5:00 p.m. on the fourth day preceding the election.

C. Upon receipt of the petition, the municipal clerk shall verify whether the challengers, watchers and alternates are properly qualified pursuant to Subsection D of this section. Not later than 3:00 p.m. on the day prior to the election, the municipal clerk shall prepare official identification badges for those challengers, watchers and alternates who are properly qualified. Such identification badges shall be signed by the municipal clerk and contain the name of the challenger, watcher or alternate and state that person's title and the polling place where such person serves. Challengers, watchers and alternates

shall be responsible to obtain their identification badges from the office of the municipal clerk prior to the opening of the polls on election day.

D. A challenger, watcher or alternate shall function only at a polling place that serves the precinct within which such challenger, watcher or alternate resides. No sheriff, deputy sheriff, marshal, deputy marshal, municipal or state police officer, candidate or any person who is a spouse, parent, child, brother or sister of a candidate to be voted for at the election or any municipal clerk, deputy clerk or assistant shall serve as a challenger, watcher or alternate. No person shall serve as a challenger or watcher unless that person is a qualified elector of the municipality.

E. Upon presentation of their official identification badges to the precinct board, challengers, watchers and alternates shall be permitted to be present at the polling place from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

F. Challengers, watchers and alternates shall wear their official identification badges at all times while they are present in the polling place. They shall not wear any other form of identification or any pins or other identification associated with any candidate, group of candidates or any question presented at the election.

G. Challengers, watchers and alternates shall not:

(1) be permitted to perform any duty of a precinct board member;

(2) handle the ballots, signature rosters, absentee voter lists or voting machines;

(3) take any part in the tallying or counting of the ballots; or

(4) interfere with the orderly conduct of the election.

H. If a challenger, watcher or alternate is wearing his official identification badge, it is a petty misdemeanor to:

(1) deny him the right to be present at the polling place;

(2) deny him the right to examine voting machines as authorized by law;

(3) deny a challenger or alternate challenger the right to challenge voters pursuant to Section 3-8-43 NMSA 1978 and inspect the signature rosters; or

(4) deny him the right to witness the counting and tallying of ballots.

I. A challenger or alternate challenger, for the purposes of interposing challenges pursuant to Section 3-8-43 NMSA 1978, shall be permitted to:

(1) inspect the voter registration list;

(2) inspect the signature rosters or absentee voter lists to determine whether entries are being made in accordance with law;

(3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the numbers on the key envelope, to see that all ballot labels are in their proper places and to see that the voting machine is ready for voting at the opening of the polls;

(4) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and

(5) witness the counting and tallying of the ballots.

J. A watcher or alternate watcher shall be permitted to:

(1) observe the election to assure that it is conducted in accordance with law;

(2) examine any voting machine used at the polling place in the same manner that challengers may examine voting machines;

(3) make written memoranda of any action or omission on the part of any member of the precinct board and preserve such memoranda for future use; and

(4) witness the counting and tallying of ballots.

K. The governing body of a municipality may, at its discretion, appoint one qualified elector for each polling place to serve as an observer of the election. The governing body shall make such appointment not later than 3:00 p.m. on the day before the election and shall notify the municipal clerk of such appointment. The municipal clerk shall issue identification badges to all observers. An observer shall have no powers other than to observe the conduct of the election and observe the counting and tallying and report to the governing body."

Chapter 278 Section 8

Section 8. Section 3-8-35 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-2, as amended) is amended to read:

"3-8-35. SPECIAL ELECTION--GIVING NOTICE.--

A. When a special election is called or required by law, an election resolution shall be adopted by the governing body calling for the election, and the election resolution shall be published once each week for four consecutive weeks. The first publication of the election resolution shall be between fifty and sixty days before the day of the election.

The election resolution shall be posted in the office of the municipal clerk within twenty-four hours from the date of adoption until the date of the election. For information purposes and coordination, one copy of the election resolution shall be mailed to the secretary of state and the county clerk of the county in which the municipality is located.

B. The election resolution shall state the purpose for calling the election, the date of the election, the date and time of the closing of the registration books by the county clerk as required by law, the questions to be submitted to the voters, the location of polling places, the consolidation of precincts, if any, and, regarding those municipalities authorized by law to use paper ballots in lieu of voting machines, if paper ballots or voting machines will be used in the election."

Chapter 278 Section 9

Section 9. Section 3-8-38 NMSA 1978 (being Laws 1985, Chapter 208, Section 46, as amended) is amended to read:

"3-8-38. CONDUCT OF ELECTION--SWEARING IN--DELIVERY OF SUPPLIES--OPENING AND CLOSING OF POLLS--PRECINCT BOARD ATTENDANCE.--

A. Not earlier than noon on the day before the election and not later than one hour prior to the opening of the polls, the municipal clerk shall swear in the presiding judge and cause the election supplies, voting machine keys, ballot box, ballot box keys and other election materials to be delivered to the presiding judge.

B. The presiding judge shall cause all materials delivered to him to be delivered to the polling place not later than 6:00 a.m. on election day.

C. The presiding judge shall swear in all precinct board members upon their arrival at the polling place.

D. Polls shall be opened at 7:00 a.m. on the date of the election and shall be closed at 7:00 p.m. on the same day.

E. Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the day of the election and shall remain at the polling place until all duties of the precinct board are properly completed."

Chapter 278 Section 10

Section 10. Section 3-8-40 NMSA 1978 (being Laws 1985, Chapter 208, Section 48, as amended) is amended to read:

"3-8-40. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE--CERTIFICATE VOTING--FRAUDULENT AND DOUBLE VOTING.--

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector and he has appeared to vote at the polling place in the precinct or consolidated precinct which encompasses his place of residence as shown on the signature roster.

B. Notwithstanding the provisions of Subsection A of this section, a person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct and the district, if applicable, in which he offers to vote;

(2) his name is not listed as having been issued an absentee ballot;

(3) his name is not listed as having voted during early voting;

(4) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from the voter rolls and that he shall be permitted to vote in the precinct and election specified therein; provided that such authorization shall not be given orally by the county clerk; and

(5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B of this section, the election judge shall cause the election clerks to:

(1) write the person's name and address, as shown on the certificate, in the signature roster under the heading for name and address in the first blank space immediately below the last name and address appearing in the signature roster;

(2) insert the person's ballot number or voter number as shown on the public counter of the voting machine on the certificate and on his executed sworn statement;

(3) retain the completed certificate and the executed sworn statement, which shall be returned to the municipal clerk with the election returns; and

(4) comply with all relevant requirements of Section 3-8-41 NMSA 1978.

D. After canvass, the municipal clerk shall in writing notify the county clerk of the names of all individuals voting on certificates.

E. A person who knowingly executes a false statement required by Paragraph (5) of Subsection B of this section is guilty of perjury as provided in the Criminal Code, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. A person not entitled to vote who fraudulently votes or a person who votes or offers to vote more than once at any election is guilty of a fourth degree felony."

Chapter 278 Section 11

Section 11. Section 3-8-43 NMSA 1978 (being Laws 1985, Chapter 208, Section 51, as amended) is amended to read:

"3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED CHALLENGES--ENTRIES--DISPOSITION.--

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons, which shall be stated in an audible tone by the person making the challenge:

(1) the person offering to vote is not registered;

(2) the person offering to vote is listed among those persons in the precinct to whom an absentee ballot was issued or is listed as an early voter;

(3) the person offering to vote is not a qualified elector;

(4) the person offering to vote is not listed on the signature roster or voter registration list;

(5) in the case of an absentee ballot, if the official mailing envelope containing an absentee ballot has been opened prior to delivery of absentee ballots to the absent voter precinct board; or

(6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where he is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or his name has been entered in the signature roster pursuant to Subsection C of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster.

(1) If the challenge is unanimously affirmed by the election judges:

(a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;

(b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;

(c) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in his presence place the challenged ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on the envelope; and

(d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted.

(2) If the challenge is not unanimously affirmed by the election judges:

(a) the election clerks shall write the words "not affirmed" above the person's signature next to the challenge notation in the signature roster; and

(b) the person shall be allowed to vote in the manner allowed by law as if the challenge had not been interposed.

C. A required challenge shall be interposed by the precinct board when a person attempts to offer himself to vote and demands to vote and his name does not appear on the signature roster and cannot be entered pursuant to Subsection C of Section 3-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

(1) the election judge shall cause the election clerks to enter the person's name and address under the heading "name and address" in the signature roster in the first blank space immediately below the last name and address that appears in the signature roster;

(2) the election clerk shall immediately write the words "required challenge" above the space provided for the person's signature in the signature roster;

(3) the person shall sign his name in the signature roster;

(4) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster; and

(5) the person shall be allowed to mark and prepare the ballot. He shall return the paper ballot to an election judge who shall announce his name in an audible tone and in his presence place the required challenge ballot in an envelope marked "rejected--required challenge" which shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted."

Chapter 278 Section 12

Section 12. Section 3-8-47 NMSA 1978 (being Laws 1985, Chapter 208, Section 55, as amended) is amended to read:

"3-8-47. CONDUCT OF ELECTIONS--DISPOSITION OF SIGNATURE ROSTER--MACHINE-PRINTED RETURNS--BALLOT BOXES--ELECTION RETURN CERTIFICATE--AFFIDAVITS--OTHER ELECTION MATERIALS.--

A. After all certificates have been executed, the precinct board shall place one copy of the signature roster and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope or other container provided by the municipal clerk for such purpose:

(1) all ballot box keys;

(2) one signature roster;

(3) one voter registration list;

(4) the election returns certificate;

(5) one copy of the machine-printed returns;

(6) a machine cartridge for any electronic marksense voting machine; and

(7) voting machine permits.

C. The locked ballot box containing any paper ballot cast in the election, election returns, all unused election supplies and all material listed in Subsection B of this section shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The summons shall be served by a sheriff or state police officer without cost to the municipality, and the

members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

E. Once the ballot box is locked, it shall not be opened prior to canvassing by the municipal clerk."

Chapter 278 Section 13

Section 13. Section 3-8-51 NMSA 1978 (being Laws 1985, Chapter 208, Section 59) is amended to read:

"3-8-51. CONDUCT OF ELECTION--EMERGENCY PAPER BALLOTS--PAPER BALLOTS--UNUSED BALLOTS--DESTRUCTION OF UNUSED BALLOTS--COUNTING AND TALLYING.--

A. Immediately upon closing of the polls, the election judge shall prepare a certificate of destruction, which shall state the number of the last ballot which was used for voting, the numbers of the ballots that were destroyed and the fact that all unused ballots were destroyed.

B. Immediately after preparation of the certificate of destruction and before any ballot box is unlocked, the precinct board shall destroy all unused ballots in the presence of the candidates, if present, the municipal clerk, if present, certified challengers and watchers, if any, and representatives of the news media, if any.

C. On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the municipal clerk shall publicly, in the clerk's office, proceed to destroy every unused ballot that remains in the clerk's control and make and file an affidavit in writing as to the number of ballots so destroyed.

D. The precinct board shall count and tally the ballots and certify the results of the election on the form provided on the cover of the signature roster by writing opposite the name of each candidate in words and figures the total number of votes cast for the candidate and shall set forth in the spaces provided therefor in words and figures the total number of votes cast for or against each question submitted. Ballots not marked as required by the Municipal Election Code shall not be counted.

E. Only the members of the precinct board, candidates, municipal clerk, representatives of the news media and certified challengers and watchers may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by the election judge who shall read the name of each candidate and the total vote cast for each candidate. The election judge shall also read the total vote cast for and against each question submitted. The election judge shall thereupon complete an election return certificate on which is recorded the total number of votes cast for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board."

Chapter 278 Section 14

Section 14. Section 3-8-53 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-14, as amended) is amended to read:

"3-8-53. POST-ELECTION DUTIES--CANVASS OF RETURNS--MAJORITY VOTE FOR QUESTIONS.--

A. After the polls are closed and after the return of the ballot box, election returns and other materials by a precinct board and not later than noon on the third day after the election, the municipal clerk shall call to his assistance to open the returns either a magistrate within the county, so long as the magistrate is not a candidate for an office of the municipality, or the members of the governing body of the municipality at a special meeting. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

B. In the presence of the other members of the municipal canvassing board, the municipal clerk shall publicly:

(1) canvass the returns in the manner set forth in the Municipal Election Code;

(2) prepare and execute a certificate of canvass certifying the results of the election. Such certificate shall contain the total number of voters who voted at the election, the total number of votes cast for each candidate, each declared write-in candidate and for and against each question, which candidates were elected to office and whether each question passed or failed;

(3) sign the certificate of canvass with the municipal canvassing board signing the certificate of canvass as witnesses; and

(4) immediately file the certificate of canvass in the official minute book of the municipality.

C. The matters to be performed pursuant to Subsection B of this section shall be completed not later than 5:00 p.m. on the third day following the election, and such matters shall be performed solely at the office of the municipal clerk.

D. All questions submitted to the voters shall be decided by a majority of the voters voting on the question except as otherwise provided by law."

Chapter 278 Section 15

Section 15. Section 3-8-55 NMSA 1978 (being Laws 1985, Chapter 208, Section 63, as amended) is amended to read:

"3-8-55. POST-ELECTION DUTIES--CANVASS--DEFECTIVE RETURNS--CORRECTION.--

A. The municipal clerk shall immediately order the precinct board to appear and make the necessary corrections or supply omissions or any missing election returns if it appears:

(1) on the face of the election returns that any certificate has not been properly executed;

(2) that there is a discrepancy within the election returns;

(3) that there is a discrepancy between the number of votes set forth in the certificate for all candidates and the number of electors voting as shown by the election returns;

(4) that there is any omission, informality, ambiguity, error or uncertainty on the face of the returns; or

(5) that there are missing election returns.

B. If any members of the precinct board fail to appear as required, the municipal clerk shall immediately issue a summons commanding them to appear. The summons shall be served by a sheriff or state police officer as in the manner of civil cases, and for each service a sheriff or state police officer shall be allowed the same mileage as is paid in civil cases.

C. After issuing the necessary notifications or summonses, the canvass of all correct election returns shall proceed."

Chapter 278 Section 16

Section 16. Section 3-8-57 NMSA 1978 (being Laws 1985, Chapter 208, Section 65) is amended to read:

"3-8-57. POST-ELECTION DUTIES--CANVASS--SEARCH FOR MISSING RETURNS.--The municipal clerk may open the ballot box during canvass for the purpose of obtaining ballots cast in the election to be counted and tallied, to search for missing election returns and to remove all unused election supplies from the ballot box. The

ballot box shall be opened by the municipal clerk only in the presence of the canvassing board."

Chapter 278 Section 17

Section 17. Section 3-8-63 NMSA 1978 (being Laws 1985, Chapter 208, Section 71) is amended to read:

"3-8-63. CONTEST OF ELECTIONS--WHO MAY CONTEST--STATUS OF PERSON HOLDING CERTIFICATE--FILING OF COMPLAINT.--

A. Any unsuccessful candidate for election to any municipal office may contest the election of the candidate to whom a certificate of election has been issued. Twenty percent of those people who voted at the municipal election may contest the election on a question.

B. In case of a contest of an election, the person holding the certificate of election shall take possession and discharge the duties of the office until the contest is decided. If a contest of a question occurs, the question shall be considered passed or defeated according to the official certificate of canvass of the election filed by the municipal clerk in the official records of the municipality until the contest is decided.

C. Any action to contest an election shall be commenced by the filing of a verified complaint of contest in the district court. Such complaint shall be filed no later than thirty days from issuance of the certificate of election to the successful candidate or thirty days after completion of canvassing for elections in which there are no candidates for municipal office. A copy of the petition shall be served on the municipal clerk, and the municipality shall be afforded an opportunity to intervene in the contest. The one instituting the action shall be known as the contestant and the one against whom the action is instituted shall be known as the contestee. The rules of civil procedure shall apply to all actions commenced under the provisions of this section."

Chapter 278 Section 18

Section 18. Section 3-8-65 NMSA 1978 (being Laws 1985, Chapter 208, Section 73, as amended) is amended to read:

"3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

A. Either the contestant or contestee, within the time provided by the Municipal Election Code for the preservation of ballots, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot faces and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, paper ballots, early voting ballots, early voting applications, early voting lists, marksense ballots, absentee ballots, absentee ballot outer envelopes, statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars ($25.00) per precinct or consolidated precinct, the court may issue an order of impoundment."

Chapter 278 Section 19

Section 19. Section 3-8-68 NMSA 1978 (being Laws 1985, Chapter 208, Section 76) is amended to read:

"3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the paper ballots used in lieu of voting machines, emergency paper ballots, early voting ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the paper ballots used in lieu of voting machines, emergency paper ballots, early voting ballots or absentee ballots or a recheck of the votes shown on the voting machines that were cast in the precinct.

B. In the case of any office for which the municipal clerk issues a certificate of election, application for recount or recheck shall be filed with the municipal clerk.

C. Any applicant for a recount shall deposit with the municipal clerk fifty dollars ($50.00) in cash or a sufficient surety bond in an amount equal to fifty dollars ($50.00) for each precinct or consolidated precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the municipal clerk ten dollars ($10.00) in cash or a sufficient surety bond in an amount equal to ten dollars ($10.00) for each voting machine to be rechecked.

D. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

E. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the

municipality upon warrant of the municipal clerk from the general fund of the municipality.

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, they shall not be entitled to such mileage or fees."

Chapter 278 Section 20

Section 20. Section 3-8-69 NMSA 1978 (being Laws 1985, Chapter 208, Section 77) is amended to read:

"3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

A. Immediately after filing of the application for recount or recheck, the municipal clerk shall issue a summons directed to the precinct board of each precinct or consolidated precinct specified in the application commanding it to appear at the office of the municipal clerk on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for recount or recheck. A copy of the summons shall be forwarded to the county clerk of the concerned county.

B. The municipal clerk shall deliver the summons to a sheriff or state police officer who shall forthwith personally serve it upon each of the precinct board members. The municipal clerk shall send notices by registered mail of the date, time and place fixed for recount or recheck to the district judge and county clerk.

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and places fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the paper ballots used in lieu of voting machines or emergency paper ballots or recheck the votes cast on the voting machine, as the case may be, and recount and retally early voting ballots, the absentee ballots for the office in question in the presence of the municipal clerk, the county clerk, district judge or person designated to act for the judge and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where emergency paper ballots, paper ballots used in lieu of voting machines, early voting ballots or absentee ballots were used shall recount and retally only the ballots which the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the emergency paper ballots, paper ballots used in lieu of voting machines, early voting ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge or the person designated to act for the judge, the county clerk and the municipal clerk shall also certify that the recount or recheck was made in their presence."

Chapter 278 Section 21

Section 21. Section 3-8-71 NMSA 1978 (being Laws 1985, Chapter 208, Section 79, as amended) is amended to read:

"3-8-71. PRESERVATION OF ELECTION INFORMATION.--

A. The municipal clerk shall retain for two years after each municipal election:

(1) the absentee ballot register, application for absentee ballots, absentee voter lists and affidavits of destruction;

(2) the early voting register, early voting applications, early voter list and affidavits of destruction;

(3) if applicable the combined register for early voting and absentee voting;

(4) signature roster and registered voter list;

(5) the machine-printed returns;

(6) oaths of office of the precinct board;

(7) declarations of candidacy and withdrawals;

(8) copies of all election material required to be published or posted;

(9) a copy of all sample ballots and ballot faces;

(10) voting machine permits;

(11) certificates submitted by voters;

(12) copies of all affidavits and certificates prepared in connection with the election;

(13) all results of recounts, rechecks, contests and recanvass; and

(14) all other significant election materials.

B. The district court shall retain for forty-five days after each municipal election all election materials sent by the precinct board. Thereafter, the material may be destroyed unless needed by the court in connection with a contest or other case or controversy.

C. The municipal clerk shall destroy election records two years after the election by shredding, burning or otherwise destroying."

Chapter 278 Section 22

Section 22. Section 3-8-74 NMSA 1978 (being Laws 1985, Chapter 208, Section 82) is amended to read:

"3-8-74. UNLAWFUL POSSESSION OF KEYS--EARLY VOTING BALLOT OR ABSENTEE BALLOT--PENALTY.--

A. Unlawful possession of keys consists of the possession at any time by any person of any key to a voting machine or ballot box or possession of an imitation or duplicate thereof or making or causing to be made any imitation or duplicate thereof unless authorized by the Municipal Election Code.

B. A person who commits unlawful possession of keys is guilty of a fourth degree felony.

C. Unlawful possession of an absentee ballot consists of the possession by any person at any time of absentee ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials or when such materials were obtained in an unlawful manner. As used in this section, "absentee ballot materials" means an absentee ballot, absentee ballot envelopes, the absentee ballot register or absentee ballot return.

D. A person who commits unlawful possession of an absentee ballot is guilty of a fourth degree felony.

E. Unlawful possession of an early voting ballot consists of the possession by any person at any time of early voting ballot materials when not authorized by the Municipal Election Code to be in the possession of such materials, or when such materials were obtained in an unlawful manner. As used in this section, "early voting ballot materials" means an early voting ballot, the early voting ballot register or early voting election returns.

F. A person who commits unlawful possession of an early voting ballot is guilty of a fourth degree felony."

Chapter 278 Section 23

Section 23. Section 3-8-75 NMSA 1978 (being Laws 1985, Chapter 208, Section 83) is amended to read:

"3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--FALSE SWEARING--PENALTY.--

A. False voting consists of:

(1) voting or offering to vote with the knowledge of not being a qualified elector;

(2) voting or offering to vote in the name of any other person;

(3) knowingly voting or offering to vote in any precinct except that in which one is registered;

(4) voting or offering to vote more than once in the same election;

(5) inducing, abetting or procuring or attempting to induce, abet or procure a person known not to be a qualified elector to vote; or

(6) inducing, abetting or procuring or attempting to induce, abet or procure a person who has voted once in any election to vote or attempt to vote again at the same election.

B. A person who commits false voting is guilty of a fourth degree felony.

C. Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, municipal clerk or other election official:

(1) printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

(2) printing, causing to be printed, distributing or displaying any official ballot, absentee ballot, early voting ballot, marksense ballot, sample ballot, facsimile diagram, ballot face or pretended ballot that includes the name of any person not entitled by law to be on the ballot or omits or defaces the name of any person entitled by law to be on the ballot or otherwise contains false or misleading information or headings;

(3) defacing, altering, forging, making false entries in or changing any election document, including but not limited to election returns, a certificate of election registration record or signature rosters, affidavits, certificates or any other election document except as authorized in the Municipal Election Code;

(4) withholding any certificate of election, registered voter list, signature roster, election return or any other election document required by or prepared and issued pursuant to the Municipal Election Code; or

(5) preparing or submitting any false certificate of election, signature roster, registered voter list, election return or any other election document.

D. A person who falsifies election documents is guilty of a fourth degree felony.

E. False swearing consists of knowingly taking or giving any oath required by the Municipal Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

F. A person who falsely swears is guilty of a fourth degree felony."

Chapter 278 Section 24

Section 24. Section 3-8-79 NMSA 1978 (being Laws 1985, Chapter 208, Section 87) is amended to read:

"3-8-79. CONSPIRACY--GENERAL PENALTY--VIOLATION BY MUNICIPAL CLERK--PENALTY.--

A. Conspiracy to violate the Municipal Election Code consists of two or more persons knowingly combining, uniting or agreeing to cause or attempt to cause the omission or commission of any duty or act that violates the provisions of the Municipal Election Code.

B. A person who commits conspiracy to violate the Municipal Election Code is guilty of a fourth degree felony.

C. If the Municipal Election Code does not impose a specific penalty for the violation of a provision prohibiting a specific act, a person who knowingly commits such violation is guilty of a misdemeanor.

D. Violation of the Municipal Election Code consists of the willful violation of the Municipal Election Code or the willful failure or refusal to perform any act or duty required by the Municipal Election Code.

E. A member of the municipal governing body, a municipal official or employee, or municipal clerk, deputy or assistant who willfully violates the Municipal Election Code is guilty of a fourth degree felony and, in addition, such violation is sufficient cause for removal from office in a proceeding instituted for that purpose as provided by law."

Chapter 278 Section 25

Section 25. Section 3-8-80 NMSA 1978 (being Laws 1985, Chapter 208, Section 88) is amended to read:

"3-8-80. UNIFORM PROCEDURE.--The provisions of Sections 3-8-38 through 3-8-79 NMSA 1978 concerning election day matters, post election duties, election challenges and penalties shall apply to all municipal elections, except as otherwise specified."

Chapter 278 Section 26

Section 26. Section 3-9-3 NMSA 1978 (being Laws 1973, Chapter 375, Section 1, as amended) is amended to read:

"3-9-3. ABSENTEE VOTING--REGULAR OR SPECIAL MUNICIPAL ELECTIONS--RIGHT TO VOTE.--

A. Any voter or any federal voter or federal qualified elector entitled to vote in the municipal election

may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at his polling place, as if he were able to cast his ballot in person at such polling place.

B. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision."

Chapter 278 Section 27

Section 27. Section 3-9-4 NMSA 1978 (being Laws 1973, Chapter 375, Section 3, as amended) is amended to read:

"3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

A. Application by a federal qualified elector or federal voter shall be made on the federal postcard application form to the municipal clerk.

B. The municipal clerk shall prescribe the form of the absentee ballot application.

C. An absentee ballot application shall be furnished by the municipal clerk by mail or in person in the office of the municipal clerk to the voter upon request by the voter.

D. A list containing the names and address of voters requesting absentee ballot applications shall be kept and shall be made a part of the absent ballot register.

E. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

F. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

(1) the application is not made on the form provided by the municipal clerk;

(2) the application does not set forth the applicant's full name and address;

(3) the applicant has voted early;

(4) the application is not signed by the applicant; or

(5) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter;

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; or

(c) is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

G. If the municipal clerk rejects the absentee ballot application pursuant to Subsection F of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant of the reasons for rejection of the application. Upon rejection of the application, the municipal clerk shall determine the method of notification to the voter. Notification shall only be made by courier with return receipt or certified mail, return receipt requested. The person whose application has been rejected shall have ten days from receipt of notice to appeal or show cause why the application should be accepted. In addition, if the application is incomplete, the clerk shall mail immediately a new application for absentee ballot.

H. If the application for absentee ballot is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the absentee ballot register; and

(3) issue to the applicant an absentee ballot.

I. The municipal clerk shall deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector, federal qualified elector or federal voter whose application for an absentee ballot was received by mail and has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals which have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

J. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

K. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall issue the voter the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk. Absentee ballots may be cast in person beginning on the twenty-seventh day before the election at the municipal clerk's office until 5:00 p.m. on the Thursday immediately prior to the date of election.

L. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than is provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

M. Absentee ballots shall be air mailed to federal qualified electors and federal voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Thursday immediately prior to the date of the election.

N. Absentee ballots shall be mailed to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on Thursday immediately prior to the date of the election.

O. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot."

Chapter 278 Section 28

Section 28. Section 3-9-5 NMSA 1978 (being Laws 1973, Chapter 375, Section 6, as amended) is amended to read:

"3-9-5. ABSENTEE BALLOT REGISTER.--

A. For each election, the municipal clerk shall keep an "absentee ballot register" in which he shall enter:

(1) in numerical sequence, the name and municipal address of each absentee ballot applicant;

(2) the date and time of receipt of the application;

(3) whether the application was accepted or rejected;

(4) the date of delivery to the voter in person in the office of the municipal clerk, or mailing of an absentee ballot to the applicant, the method of delivery and, if mailed, the address to which the ballot was mailed;

(5) the applicant's precinct and district number, if applicable;

(6) whether the applicant is a voter, a federal voter or a federal qualified elector;

(7) affidavits of voters who did not receive absentee ballots; and

(8) the date and time the completed ballot was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election.

C. For the purposes of recordkeeping, the absentee register may be combined with the early voting register, provided that the method of balloting shall be labeled either "absentee ballot" or "early voter"."

Chapter 278 Section 29

Section 29. Section 3-9-6 NMSA 1978 (being Laws 1973, Chapter 375, Section 7, as amended) is amended to read:

"3-9-6. FORM OF ABSENTEE BALLOT--FORM OF ABSENTEE BALLOT ENVELOPES.--

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for emergency paper ballots or paper ballots used in lieu of voting machines. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and federal voters and federal qualified electors shall be printed in blue in the form prescribed by postal regulations and the Federal Voting Assistance Act of 1955. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be signed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Chapter 278 Section 30

Section 30. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended) is amended to read:

"3-9-7. MANNER OF VOTING.--

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot, place the ballot in the official inner envelope and securely seal the envelope. The person voting shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The person voting shall then fill in the form on the reverse of the official mailing envelope.

B. Federal voters and federal qualified electors shall either deliver their ballots in person or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of residence. Voters shall either deliver or mail the official mailing envelope to the municipal clerk of their municipality of residence. The municipal clerk shall not accept an official outer envelope that is delivered in person to the municipal clerk's office from any person other than the voter signing the official outer envelope.

C. Any person voting on the marksense ballot shall secretly mark the ballot by completing the arrow in pencil directly to the right of the candidate's name or the proposed question. The voter shall then place the marked ballot in the official inner envelope and securely seal the envelope and then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope."

Chapter 278 Section 31

Section 31. Section 3-9-8 NMSA 1978 (being Laws 1973, Chapter 375, Section 9, as amended) is amended to read:

"3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF UNUSED BALLOTS BY MUNICIPAL CLERK.--

A. The municipal clerk shall mark on each completed official outer envelope the date and time of receipt in his office, record this information in the absentee ballot register and safely and securely keep the official outer envelope unopened until it is delivered on election day to the proper precinct board or until it is canceled and destroyed in accordance with law. Once a ballot is officially accepted by the municipal clerk and recorded in the absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter signing the official outer envelope until 7:00 p.m. on election day. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be

delivered to the precinct board and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the municipal clerk shall count the numbers of late ballots from voters, federal voters and federal qualified electors and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Thursday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all such unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and such certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election, the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "certificate of unreceived absentee ballots". Such certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the certificate of unreceived absentee ballots."

Chapter 278 Section 32

Section 32. Section 3-9-9 NMSA 1978 (being Laws 1973, Chapter 375, Section 10, as amended) is amended to read:

"3-9-9. ABSENT VOTER PRECINCT.--For the purposes of absentee voting, the governing body shall create a special absent voter precinct, cause an absent voter precinct board to be appointed consisting of election judges and election clerks as provided in the Municipal Election Code and shall designate a polling place for the counting and tallying of absentee ballots in the election on election day. The municipal clerk shall administer the oath to the election judges. A regular precinct board may be designated to serve as the absent voter precinct board. Members of the absent voter precinct board shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the absent voter precinct board be entitled to extra compensation for serving on the absent voter precinct board."

Chapter 278 Section 33

Section 33. Section 3-9-10 NMSA 1978 (being Laws 1985, Chapter 208, Section 98, as amended) is amended to read:

"3-9-10. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER PRECINCT.--After 7:00 a.m. on election day, the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk.

Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absentee ballot register and on the absentee voter list. On delivery of the ballots, the municipal clerk or his designee shall remain in the presence of the absent voter precinct board until the clerk has observed the opening of all official mailing envelopes, the deposit of all ballots in the locked ballot box and the listing of the names on all of the official mailing envelopes in the absentee voter list. All functions of the absent voter precinct board shall be conducted in the place designated as the absent voter precinct."

Chapter 278 Section 34

Section 34. Section 3-9-13 NMSA 1978 (being Laws 1973, Chapter 375, Section 11, as amended) is amended to read:

"3-9-13. VOTING IN PERSON PROHIBITED.--

A. No person who has been issued an absentee ballot shall vote by early ballot or in person at that person's regular precinct polling place on election day.

B. At any time prior to 5:00 p.m. on the Thursday immediately preceding the date of the election, any 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 municipal clerk of the municipality where that person is registered to vote, a sworn affidavit stating that the person did not receive or vote his absentee ballot. Upon receipt of the sworn affidavit, the municipal clerk shall issue the voter a replacement absentee ballot.

C. The municipal clerk shall prescribe the form of the affidavit and the manner in which the municipal clerk shall void the first ballot mailed to the applicant."

Chapter 278 Section 35

Section 35. Section 3-9-15 NMSA 1978 (being Laws 1973, Chapter 375, Section 13) is amended to read:

"3-9-15. WATCHERS, CHALLENGERS, AND OBSERVERS FOR ABSENT VOTER PRECINCT.--Watchers, challengers and observers may be appointed to serve on election day for the absent voter precinct in the manner specified for the appointment of watchers, challengers and observers for other precincts used in municipal elections."

Chapter 278 Section 36

Section 36. Section 3-9-16 NMSA 1978 (being Laws 1973, Chapter 375, Section 14, as amended) is amended to read:

"3-9-16. PENALTIES.--

A. Any person who knowingly votes or offers to vote an absentee ballot to which he is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. Any municipal official or employee or any other person who furnishes absentee ballots to persons who are not entitled to such ballots under the provisions of the Municipal Election Code is guilty of a fourth degree felony.

C. Any municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an absentee ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. Any person who knowingly or willfully makes any false statement in any application for an absentee ballot or in the absentee ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. A person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot from the physical confines of the municipal clerk's office is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony."

Chapter 278 Section 37

Section 37. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING.--

A. The governing body of a municipality shall provide for early voting for any regular or special municipal election at the time of the adoption of the election resolution for a regular or special municipal election, and shall designate the office of the municipal clerk as the early voting precinct.

B. Early voting shall be done during the municipality's regular hours and days of business, between Monday and Friday, commencing on the twentieth day preceding the election and closing at 5:00 p.m. on the Friday immediately prior to the date of the election.

C. The municipal clerk shall publish notice of early voting at least twice, between thirty and forty-five days prior to the election, and shall make reasonable efforts to publicize and inform voters of the time and location for early voting."

Chapter 278 Section 38

Section 38. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING PRECINCT BOARD.--For the purposes of early voting, the governing body shall create a special early voting precinct, cause a precinct board to be appointed to serve on election day consisting of election judges and election clerks as provided in the Municipal Election Code and shall designate a place for the counting and tallying of early votes in the election. The municipal clerk shall administer the oath to the election judges. The early voting election officials shall receive the same compensation as other precinct board members, but in no case shall a precinct board member who also serves as a member of the early voting precinct board be entitled to extra compensation for serving on the early voting precinct board."

Chapter 278 Section 39

Section 39. A new section of the Municipal Election Code is enacted to read:

"MANNER OF VOTING.--

A. At the time of the adoption of the election resolution the governing body shall determine the manner of casting and recording votes, and if voting machines are to be used, the municipal clerk shall order the voting machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation. The municipality shall pay the reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount that exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978. The ordering, preparation, certification and delivery of voting machines shall be conducted pursuant to the provisions of Section 3-8-14 NMSA 1978 and the Municipal Election Code.

B. Early voting shall be conducted in accordance with the provisions of the Municipal Election Code and this section."

Chapter 278 Section 40

Section 40. A new section of the Municipal Election Code is enacted to read:

"RIGHT TO VOTE EARLY.--

A. Any qualified voter may vote early for all candidates and on all questions appearing on the ballot as if he were able to cast his ballot in person on election day at his regular polling place.

B. Any federal qualified elector may register and vote early.

C. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision."

Chapter 278 Section 41

Section 41. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING APPLICATION.--

A. Application by a voter for early voting shall be made only in person by the voter on a form prescribed and furnished by the municipal clerk of the municipality in which the voter is registered to vote. The municipal clerk shall prescribe the form of the early voting application.

B. The voter shall fill out the application to vote early in the office of the municipal clerk. Upon the receipt of a properly completed early voting application, the municipal clerk shall verify that the applicant is a qualified elector of the municipality.

C. The municipal clerk shall reject an early voting application for any of the following reasons:

(1) if the applicant has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter;

(2) if the applicant has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality, or district if applicable, of the municipality;

(3) the applicant has been issued an absentee ballot;

(4) if the applicant is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; or

(5) the applicant cannot comply with Paragraph (1), (2) or (3) of this subsection pursuant to Subsection B of Section 3-8-40 NMSA 1978.

D. The reverse side of each early voting application shall contain a form to be signed by the person completing the application. The form shall be signed by the applicant and shall contain the following oath: "I will not vote in this election other than by early ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."

E. If the municipal clerk rejects the early voter application pursuant to Subsection C of this section, then the municipal clerk shall refuse to permit the voter to vote and shall mark the application "rejected" and enter "rejected" in the early voting register and file the application in a separate file.

F. If the application for early voting is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the early voting register; and

(3) permit the voter to vote by issuing the voter an early voter ballot if the ballots are to be counted and canvassed by hand; or

(4) issue the voter an early voting marksense ballot if the marksense voting device is being used in the election; or

(5) permit the voter to cast his vote on the voting machine if a voting machine is being used in the election.

G. The municipal clerk shall notify the county clerk who shall enter "early voter" on the signature line of the signature roster next to the name of the person who has cast an early voting ballot. Names of individuals that have been labeled "early voter" shall appear on a separate list called the "early voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978."

Chapter 278 Section 42

Section 42. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING--USING AN ELECTRONIC VOTING DEVICE.--

A. The municipal clerk shall ensure that each voting machine is located within his office. The area shall be secured by lock and key. Each day during the early voting period the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. At the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, lock the office where the voting machine is located. Immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the early voting daily report. The municipal clerk shall prescribe the form of the early voting daily report.

B. It is the duty of the municipal clerk to verify the signature roster and early voter list to ensure that all names of individuals who have voted early have been labeled "early voter" on the signature roster and their names listed on the early voter list. If not, the

municipal clerk shall write "early voter" on the signature line of the signature roster next to the name of the person who has voted early. The municipal clerk shall then enter the name and all required information on the early voter list.

C. The act of voting early in the office of the municipal clerk shall be a convenience to the voter and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than is provided in this subsection. During the period of time between the date a person may first vote early in person and the final date for such application and voting in the office of the municipal clerk, it is unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office."

Chapter 278 Section 43

Section 43. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING REGISTER.--

A. For each election the municipal clerk shall keep an "early voting register", in which he shall enter:

(1) in numerical sequence, the name and street address of each early voter;

(2) the date and time of receipt of the application;

(3) whether the application was accepted or rejected;

(4) the applicant's precinct and district number, if applicable; and

(5) whether the applicant is a voter, a federal voter or a federal qualified elector.

B. For the purposes of recordkeeping, the early voting register may be combined with the absentee ballot register, provided that the method of balloting shall be labeled either "absentee ballot" or "early voter".

C. The early voting register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election."

Chapter 278 Section 44

Section 44. A new section of the Municipal Election Code is enacted to read:

"MANNER OF VOTING.--

A. Any person voting an early voting paper ballot pursuant to the provisions of the Municipal Election Code shall mark the ballot in the manner provided in the Municipal Election Code for marking emergency paper ballots, remove any visible number on the ballot, fold the ballot and place it in the locked ballot box.

B. Any person voting on the marksense ballot shall mark the ballot by completing the arrow directly to the right of the candidate's name or the proposed question with the pen or pencil provided by the municipal clerk. After voting the voter shall personally feed the ballot into the voting machine in order to record his vote."

Chapter 278 Section 45

Section 45. A new section of the Municipal Election Code is enacted to read:

"CERTIFICATE VOTING.--

A. No person shall vote in a municipal special or regular election unless that person is a qualified elector, in accordance with the provisions of Subsection K of Section 3-1-2 NMSA 1978, for the precinct or consolidated precinct that encompasses his place of residence as shown on the signature roster.

B. A person shall be permitted to vote even though that person's name cannot be found in the signature roster, provided:

(1) his residence is within the boundaries of the municipality and within the boundaries of the precinct, and district if applicable, in which he offers to vote;

(2) his name in not listed as having been issued an absentee ballot;

(3) he presents a certificate bearing the seal and signature of the county clerk stating that his affidavit of registration is on file at the county clerk's office, that he has not been purged from the voter rolls and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

(4) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, a resident of the municipality, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in the election.

C. Upon compliance with the requirements of Subsection B of this section, the person shall be permitted to vote."

Chapter 278 Section 46

Section 46. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING BALLOTS--DESTRUCTION OF UNUSED EARLY VOTING BALLOTS BY THE MUNICIPAL CLERK.--After 5:00 p.m. and not later than 8:00 p.m. on the Friday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused early voting ballots in the early voting register and shall publicly destroy in the municipal clerk's office all such unused ballots. The municipal clerk shall execute a certificate of such destruction that shall include the numbers on the ballots destroyed, and such certificate shall be placed within the early voting register."

Chapter 278 Section 47

Section 47. A new section of the Municipal Election Code is enacted to read:

"DELIVERY OF EARLY BALLOTS TO EARLY VOTING PRECINCT.--After 7:00 a.m. on election day, the municipal clerk shall deliver to the early voting precinct board the voting machines or early voter ballot boxes, the early voting register and the early voter list. All functions of the early voting precinct board shall be conducted in the place designated as the early voter precinct."

Chapter 278 Section 48

Section 48. A new section of the Municipal Election Code is enacted to read:

"COUNTING AND TALLYING EARLY VOTES BY THE EARLY VOTING PRECINCT BOARD.--At the precinct board election school the municipal clerk shall notify the members of the early voting precinct board of the method that will be used in the counting and tallying of ballots. The procedures shall be such as to ensure the secrecy of the ballot and shall be conducted in the manner provided in the Municipal Election Code."

Chapter 278 Section 49

Section 49. A new section of the Municipal Election Code is enacted to read:

"CANVASS--RECOUNT OR RECHECK--DISPOSITION.--Early voting ballots shall be canvassed, recounted and disposed of in the manner provided by the Municipal Election Code for the canvassing, recounting and disposition of emergency paper ballots. Where voting machines are used to register early voting ballots, such ballots shall be canvassed and rechecked in the manner provided by the Municipal Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register early voting ballots shall not be rechecked, but the early voting ballots shall be recounted in the manner provided by the Municipal Election Code for the recounting of emergency paper ballots."

Chapter 278 Section 50

Section 50. A new section of the Municipal Election Code is enacted to read:

"VOTING IN PERSON PROHIBITED.--No person who has voted early shall cast an absentee ballot or vote in person at that person's regular precinct polling place on election day."

Chapter 278 Section 51

Section 51. A new section of the Municipal Election Code is enacted to read:

"CHALLENGERS, WATCHERS AND OBSERVERS FOR EARLY VOTING PRECINCT.--Watchers, challengers and observers may be appointed in the early voting precinct to serve on election day in the same manner as the appointment of challengers, watchers, observers and alternate challengers, watchers and observers pursuant to the Municipal Election Code."

Chapter 278 Section 52

Section 52. A new section of the Municipal Election Code is enacted to read:

"PENALTIES.--

A. Any person who knowingly votes or offers to vote early when he is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. Any municipal official or employee or any other person who permits persons to vote early who are not entitled to do so under the provisions of the Municipal Election Code is guilty of a fourth degree felony.

C. Any municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an early voting ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. Any person who knowingly or willfully makes any false statement in any early voting application or in the early ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. Any person who knowingly possesses an executed or unexecuted early voting ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted early voting ballot from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted early voting ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids

or abets the unlawful removal of an executed or unexecuted early voting ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony."

Chapter 278 Section 53

Section 53. REPEAL.--Sections 3-8-17.1, 3-8-17.2 and 3-9-14 NMSA 1978 (being Laws 1997, Chapter 266, Sections 1 and 2 and Laws 1973, Chapter 375, Section 12, as amended) are repealed.

SENATE BILL 707, AS AMENDED

CHAPTER 279

RELATING TO EDUCATION; REQUIRING PROFESSIONAL DEVELOPMENT OF TEACHERS.

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

Chapter 279 Section 1

Section 1. Section 22-2-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 5, as amended) is amended to read:

"22-2-2. STATE BOARD--DUTIES.--Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

A. properly and uniformly enforce the provisions of the Public School Code;

B. determine policy for the operation of all public schools and vocational education programs in the state;

C. appoint a state superintendent;

D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt rules relating to the use and operation of instructional material depositories in the instructional material distribution process;

E. designate courses of instruction to be taught in all public schools in the state;

F. assess and evaluate all state institutions and those private schools that desire state accreditation;

G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools, according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator, according to law, for incompetency, immorality or for any other good and just cause;

I. make full and complete reports on consolidation of school districts to the legislature;

J. prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions other than the New Mexico military institute;

K. adopt rules for the administration of all public schools and bylaws for its own administration;

L. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

M. authorize adult educational programs to be conducted in schools under its jurisdiction and adopt and promulgate rules governing all such adult educational programs;

N. require any school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. require all accrediting agencies for public schools in the state to act with its approval;

P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant;

Q. require prior approval for any educational program in a public school that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency;

R. approve or disapprove all rules promulgated by any association or organization attempting to regulate any public school activity and invalidate any rule in conflict with any rule promulgated by the state board. The state board shall require any association or organization attempting to regulate any public school activity to comply with the provisions of the Open Meetings Act and be subject to the inspection of the Public Records Act. The state board may require performance and financial audits of any

association or organization attempting to regulate any public school activity. The state board shall have no power or control over the rules or the bylaws governing the administration of the internal organization of the association or organization;

S. review decisions made by the governing board or officials of any organization or association regulating any public school activity, and any decision of the state board shall be final in respect thereto;

T. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the state;

U. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and to facilitate regulation and evaluation of school programs;

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of education personnel to investigate the adequacy of pupil gain in standard required subject matter, adequacy of pupil activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

W. provide for management and other necessary personnel to operate any public school or school district that has failed to meet requirements of law, state board standards or state board rules; provided that the operation of the public school or school district shall not include any consolidation or reorganization without the approval of the local board of that school district. Until such time as requirements of law, standards or rules have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

X. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods; provided, however, that no plan shall require mandatory attendance by any member of a local school board;

Y. submit a plan applying for funds available under Public Law 94-142 and disburse these funds in the manner and for the purposes specified in the plan;

Z. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the state board has authority to order that a student attend a public school or a private school; and

AA. develop a systemic framework for professional development that provides training to ensure quality teachers and principals and that improves and enhances student achievement. The state board shall work with public school educators, the commission on higher education and institutions of higher education to establish the framework. The framework shall include:

(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department of education in approving local school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts, including teaching strategies, curriculum materials, distance learning networks and web sites to ensure that the state board's rules pertaining to content standards and benchmarks are used by New Mexico teachers."

SENATE BILL 110

CHAPTER 280

RELATING TO PUBLIC ASSISTANCE; AMENDING THE NEW MEXICO WORKS ACT TO CLARIFY THE INDIVIDUAL RESPONSIBILITY PLAN.

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

Chapter 280 Section 1

Section 1. Section 27-2B-4 NMSA 1978 (being Laws 1998, Chapter 8, Section 4 and Laws 1998, Chapter 9, Section 4) is amended to read:

"27-2B-4. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL RESPONSIBILITY PLANS--PARTICIPATION AGREEMENT--REVIEW PERIODS.--

A. Application for cash assistance or services shall be made to the department's county office in the county or district in which an applicant resides. The application shall be in writing or reduced to writing in the manner and on the form prescribed by the department. The application shall be made under oath by an applicant having custody of or residing with a dependent child who is a household group member and shall contain a statement of the age of the child, residence, a complete statement of the amount of property in which the applicant has an interest, a statement of all income that he and other household group members have at the time of the filing of the application and other information required by the department.

B. Application for expedited food stamps shall be made to the department's county office in the county or district in which an applicant resides. The department shall process the application for expedited food stamps within twenty-four hours after the application is made.

C. At the time of application for cash assistance and services, an applicant shall identify household group members who are to be counted in the benefit group. Once an application is approved, the participant shall advise the department if there are any changes in the membership of the household group or benefit group.

D. No later than forty-five days after an application is filed, the department shall provide to an applicant a resource planning session to ascertain his immediate needs, assess financial and nonfinancial options, make referrals and act on the application.

E. No later than five days after an application is approved, the department shall provide reimbursement for child care.

F. Whenever the department receives an application for assistance, a verification and record of the applicant's circumstances shall promptly be made to ascertain the facts supporting the application and to obtain other information required by the department. The verification may include a visit to the home of the applicant, as long as the department gives adequate prior notice of the visit to the applicant.

G. Within fifteen days after an application is approved, the department shall assess the education, skills, prior work experience and employability of the participant.

H. After the initial assessment of skills, the department shall work with the participant to develop an individual responsibility plan that:

(1) sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) sets forth obligations of the participant that may include a requirement that the participant attend school, maintain certain grades and attendance, keep his school-age children in school, immunize his children or engage in other activities that will help the participant become and remain employed;

(3) is designed to the greatest extent possible to move the participant into whatever employment the participant is capable of handling and to provide additional services as necessary to increase the responsibility and amount of work the participant will handle over time;

(4) describes the services the department may provide so that the participant may obtain and keep employment; and

(5) may require the participant to undergo appropriate substance abuse treatment.

I. The participant and a representative of the department shall sign the participant's individual responsibility plan. The department shall not allow a participant to decline to participate in developing an individual responsibility plan. The department shall not waive the requirement that a participant develop an individual responsibility plan. The department shall emphasize the importance of the individual responsibility plan to the participant.

J. If a participant does not develop an individual responsibility plan, refuses to sign an individual responsibility plan or refuses to attend semiannual reviews of an individual

responsibility plan, he shall be required to enter into a conciliation pursuant to Subsection C of Section 27-2B-14 NMSA 1978. If the participant persists in noncompliance with the individual responsibility plan process after the conciliation, he shall be subject to sanctions pursuant to Section 27-2B-14 NMSA 1978.

K. The participant shall also sign a participation agreement that designates the number of hours that he must participate in work activities to meet participation standards.

L. The department shall review the current financial eligibility of a benefit group when the department reviews food stamp eligibility.

M. The department shall meet semiannually with a participant to review and revise his individual responsibility plan.

N. The department shall develop a complaint procedure to address issues pertinent to the delivery of services and other issues relating to a participant's individual responsibility plan."

SENATE BILL 114

CHAPTER 281

RELATING TO EDUCATION; ENACTING THE 1999 CHARTER SCHOOLS ACT; PROVIDING FOR THE ESTABLISHMENT AND OPERATION OF CHARTER SCHOOLS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 281 Section 1

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

"SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "1999 Charter Schools Act"."

Chapter 281 Section 2

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

"DEFINITIONS.--As used in the 1999 Charter Schools Act:

A. "charter school" means a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school;

B. "conversion school" means an existing public school within a school district authorized by the local school board to become a charter school;

C. "governing body" means the governing structure of a charter school as set forth in the school's charter; and

D. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the local school board of the school district in which the school is located to become a charter school."

Chapter 281 Section 3

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

"PURPOSE.--The 1999 Charter Schools Act is enacted to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting state board minimum educational standards and fiscal requirements."

Chapter 281 Section 4

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

"CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--OPERATION.--

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

B. Notwithstanding the provisions of Section 22-1-4 NMSA 1978, a start-up school shall enroll students on a first-come, first-served basis; thereafter, a start-up school shall establish a waiting list starting with priorities on a first-come, first-served basis. As classroom space becomes available, persons highest on the waiting list shall be notified and given the opportunity to enroll.

C. A charter school shall be administered and governed by a governing body in the manner set forth in the charter.

D. A charter school shall be responsible for its own operation, including preparation of a budget, contracting for services and personnel matters.

E. A charter school may negotiate or contract with a local school district, a university or college or any third party for the use of a facility, its operation and maintenance, and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter.

F. In no event shall a charter school be required to pay rent for space that is deemed available, as negotiated by contract, in school district facilities; provided that the facilities can be made available at no cost to the district. All costs for the operation and maintenance of the facilities used by the charter school shall be subject to negotiation between the charter school and the district.

G. A charter school may negotiate with a local school district to provide transportation to students eligible for transportation under the provisions of the Public School Code.

H. A charter school may negotiate with a local school district for capital expenditures.

I. A charter school shall be a nonsectarian, nonreligious and non-home-based public school that operates within a public school district.

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

K. A charter school shall be subject to the provisions of Sections 22-1-6 and 22-2-8 NMSA 1978.

L. A charter school may acquire, pledge and dispose of property; provided that upon termination of the charter, all assets of the charter school shall revert to the local school board that authorized the charter.

M. 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.

N. A charter school may contract, sue or be sued. A local school board that approves a charter school shall not be liable for any acts or omissions of the charter school.

O. A charter school shall comply with all state and federal health and safety requirements applicable to public schools."

Chapter 281 Section 5

Section 5. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOLS--LOCAL SCHOOL BOARD AUTHORITY--STATE BOARD AUTHORITY.--

A. The local school board may waive only locally imposed school district requirements.

B. The state board shall waive requirements relating to individual class load and teaching load, length of the school day, staffing patterns, subject areas and the purchase of instructional material. The state board may waive state board requirements or rules and provisions of the Public School Code pertaining to graduation requirements, evaluation standards for school personnel, school principal duties and driver education. Any waivers granted pursuant to this section shall be for the term of the charter granted.

C. A charter school shall be a public school, accredited by the state board and shall be accountable to the school district's local school board for purposes of ensuring compliance with applicable laws, rules and charter provisions.

D. No local school board shall require any employee of the school district to be employed in a charter school.

E. No local school board shall require any student residing within the geographic boundary of its district to enroll in a charter school.

F. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides."

Chapter 281 Section 6

Section 6. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOL REQUIREMENTS--APPLICATION PROCESS--AUTHORIZATION.--

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

B. A charter school applicant shall apply to a local school board for a charter. An applicant shall only submit an application in the district in which the school is located. Applications shall be submitted by October 1 to be eligible for consideration for the following school year. The October 1 deadline may be waived upon agreement of the applicant and the local school board.

C. An application for a start-up school may be made by one or more teachers, parents or community members.

D. An application for a conversion school shall include a petition of support signed by not less than sixty-five percent of the employees in the school. Additionally, a petition in support of the charter school signed by a majority of the households whose children are enrolled in a proposed conversion school must accompany the application.

E. The local school board shall receive and review all applications for charter schools. The local school board shall not charge application fees. If the board finds the charter school application is incomplete, the board shall request the necessary information from the charter applicant.

F. The local school board shall hold at least one meeting to obtain information and community input to assist the local school board in its decision whether to grant a charter school application. The local school board shall rule on the application for a charter school in a public meeting within sixty days after receiving the application. If not ruled upon within sixty days, the charter application will be automatically reviewed by the state board in accordance with the provisions of Section 7 of the 1999 Charter Schools Act. The charter applicant and the local school board may, however, jointly waive the deadlines set forth in this section.

G. If the local school board denies a charter school application or imposes conditions that are unacceptable to the charter applicant, the charter applicant may appeal the decision to the state board pursuant to Section 7 of the 1999 Charter Schools Act.

H. If a local school board denies a charter school application, it shall state its reasons for the denial. If a local school board grants a charter, it shall send a copy of the approved charter to the department of education within fifteen days after granting the charter."

Chapter 281 Section 7

Section 7. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOL APPLICATION APPEAL--PROCEDURES.--

A. The state board, upon receipt of a notice of appeal or upon its own motion, shall review decisions of any local school board concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body of a charter school that wishes to appeal a decision of a local school board concerning the denial, nonrenewal or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the state board with a notice of appeal within thirty days after the local school board's decision. The charter school applicant or governing body of the charter school bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal or revocation specified by the local school board. The notice shall include a brief statement of the reasons the charter school

applicant contends the local school board's decision was in error. The appeal and review process shall be as follows:

(1) within sixty days after receipt of the notice of appeal, the state board, at a public hearing that may be held in the school district in which the proposed charter school has applied for a charter, shall review the decision of the local school board and make its findings. If the state board finds that the local school board's decision was contrary to the best interests of the students, school district or community, the state board shall remand the decision to the local school board with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter. The decision of the state board shall be final and not subject to appeal; and

(2) within thirty days following the remand of a decision by the state board, the local school board, at a public hearing, shall approve the charter.

C. The state board, on its own motion, may review a local school board's decision to grant a charter. Within sixty days after the making of a motion to review by the state board, the board, at a public hearing that may be held in the district in which the proposed charter school has applied for a charter, shall review the decision of the local school board and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would:

(1) violate any federal or state laws concerning civil rights;

(2) violate any court order;

(3) threaten the health and safety of students within the school district; or

(4) violate the provisions of Section 11 of the 1999 Charter Schools Act, prescribing the permissible number of charter schools.

D. If the state board determines that the charter would violate the provisions set forth in Subsection C of this section, the state board shall remand the decision to the local school board with instructions to deny the charter application. The state board may extend the time lines established in this section for good cause. The decision of the state board shall be final and not subject to appeal."

Chapter 281 Section 8

Section 8. A new section of the Public School Code is enacted to read:

"CHARTER APPLICATION--CONTENTS.--The charter school application, whether for a start-up school or a conversion school, shall be a proposed agreement between the local school board and the charter school and shall include:

A. the mission statement of the charter school;

B. the goals, objectives and student performance standards 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 state board of education'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 standards, the time line for achievement of the standards 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 regulations 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 how the governing body will be selected, the nature and extent of parental, professional educator and community involvement in the governance and operation of the school and the relationship between the governing body and the local school board;

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 local school board 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 the waivers that the charter school is requesting from the local school board and the state board and the charter school's plan for addressing these waiver requests;

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

P. any other information reasonably required by the local school board."

Chapter 281 Section 9

Section 9. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOL--CONTRACT CONTENTS--RULES.--

A. An approved charter application shall be a contract between the charter school and the local school board.

B. The contract between the charter school and the local school board shall reflect all agreements regarding the release of the charter school from school district policies.

C. The contract between the charter school and the local school board shall reflect all requests for release of the charter school from state board rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from state board rules or the Public School Code shall be delivered by the local school board to the state board. If the state board grants the request, it shall notify the local school board and the charter school of its decision. If the state board 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.

D. Upon approval of the charter by the local school board, the charter school shall be waived from the Public School Code provisions relating to individual class load and teaching load requirements, length of school day, staffing patterns, subject areas and purchase of instructional materials.

E. The charter school shall participate in the public school insurance authority.

F. Any revision or amendment to the terms of the contract may be made only with the approval of the local school board and the governing body of the charter school.

G. The charter shall include procedures agreed upon by the charter school and the local school board for the resolution of disputes between the charter school and the local school board.

H. The charter shall include procedures that shall be agreed upon by the charter school and the local school board in the event that such board determines that the charter shall be revoked pursuant to the provisions of Section 12 of the 1999 Charter Schools Act."

Chapter 281 Section 10

Section 10. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOLS--EMPLOYEE OPTIONS--HIRING AND FIRING.--

A. Notwithstanding the provisions of Section 22-5-4 NMSA 1978, a charter school shall hire its own employees. The provisions of the School Personnel Act shall otherwise apply to such employees.

B. An employee of a conversion school who was previously an employee of the school district in which the conversion school is located shall be considered to be on a one-year leave of absence from the school district. The leave of absence shall commence on the initial date of employment for the charter school. Upon request of the employee, the one-year leave of absence shall be renewed for up to two additional one-year periods, absent good cause.

C. The time during which an employee is on a leave of absence shall be counted for longevity credit on the school district's salary schedule.

D. During the period of time that an employee is on a leave of absence from the school district and is actively employed by the charter school, the charter school shall continue the retirement or other benefits previously granted to the employee.

E. A leave of absence shall not be considered a break in service with the school district with which an employee was previously employed.

F. An employee who is on a leave of absence and actively teaching at a charter school and who submits a notice of intent to return to the school district in which the employee was employed immediately prior to employment in the charter school shall be given employment preference by the school district if:

(1) the employee's notice of intent to return is submitted to the school district within three years after ceasing employment with the school district; and

(2) if the employee is a teacher, a position for which the teacher is certified or is qualified to become certified is available. If the employee is not a teacher, a position for which the employee is qualified is available.

G. An employee who is on leave of absence and employed by a charter school and is discharged or terminated for just cause by the charter school shall be considered discharged or terminated by the school district."

Chapter 281 Section 11

Section 11. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOLS--MAXIMUM NUMBER ESTABLISHED.--

A. Local school boards shall authorize the approval of both conversion and start-up charter schools within their school districts.

B. No more than fifteen start-up schools and five conversion schools may be established per year statewide. The number of charter school slots remaining in that year shall be transferred to succeeding years up to a maximum of seventy-five start-up schools and twenty-five conversion schools in any five-year period. The state board shall promptly notify the local school board of each school district when the limits set forth in this section have been reached."

Chapter 281 Section 12

Section 12. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOLS--TERM--RENEWAL OF CHARTER--GROUNDS FOR NONRENEWAL OR REVOCATION.--

A. A charter school may be approved for an initial term of five years. A charter may be renewed for successive periods of five years each. Approvals of less than five years can be agreed to between the charter school and the local school board.

B. No later than January 1 of the year prior to the year in which the charter expires, the governing body of a charter school may submit a renewal application to the local school board. The local school board shall rule in a public hearing on the renewal application no later than March 1 of the year in which the charter expires, or on a mutually agreed date.

C. A charter school renewal application submitted to the local school board shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state board minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in Section 22-1-6 NMSA 1978;

(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 will allow comparison of costs to other schools or comparable organizations and that is in a format required by the state board;

(3) contents of the charter application set forth in Section 8 of the 1999 Charter Schools Act;

(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; and

(5) a petition in support of the charter school renewing its charter status signed by a majority of the households whose children are enrolled in the charter school.

D. A charter may be revoked or not renewed by the local school board if the board determines that the charter school did any of the following:

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

(2) failed to meet or make substantial progress toward achievement of the state board minimum educational standards or student performance standards identified in the charter application;

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

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

E. If a local school board revokes or does not renew a charter, the local school board shall state in writing its reasons for the revocation or nonrenewal.

F. A decision to revoke or not to renew a charter may be appealed by the governing body of the charter school pursuant to Section 7 of the 1999 Charter Schools Act."

Chapter 281 Section 13

Section 13. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOL FINANCING.--

A. The amount of funding allocated to the charter school shall be not less than ninety-eight percent of the school-generated program cost.

B. That portion of money from state or federal programs generated by students enrolled in a charter school shall be allocated to charter schools serving students eligible for that aid. Any other public school program not offered by the charter school shall not be entitled to the share of money generated by a charter school program.

C. All services centrally or otherwise provided by the local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the local school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost."

Chapter 281 Section 14

Section 14. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOLS STIMULUS FUND CREATED.--

A. The "charter schools stimulus fund" is created in the state treasury. Money in the fund is appropriated to the department of education to provide financial support to charter schools, whether start-up or conversion, for initial start-up costs and initial costs associated with renovating or remodeling existing buildings and structures for expenditure in fiscal year 2000 and subsequent fiscal years. The fund shall consist of money appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education shall administer the fund in accordance with rules adopted by the state board. The department of education may use up to three percent of the fund for administrative costs. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. If the charter school receives an initial grant and fails to begin operating a charter school within the next eighteen months, the charter school shall immediately reimburse the fund."

Chapter 281 Section 15

Section 15. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOLS--SAVINGS CLAUSE.--The state board may extend for a period of two years the charter of any school for which the state board has granted a charter prior to the effective date of this act. Any further extensions of the charter shall be governed by the provisions of the 1999 Charter Schools Act."

Chapter 281 Section 16

Section 16. Section 13-1-99 NMSA 1978 (being Laws 1984, Chapter 65, Section 72, as amended) is amended to read:

"13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE STATE PURCHASING AGENT.--Excluded from the requirement of procurement through the state purchasing agent but not from the requirements of the Procurement Code are the following:

A. procurement of professional services;

B. small purchases having a value not exceeding two hundred fifty dollars ($250);

C. emergency procurement;

D. procurement of highway construction or reconstruction by the state highway and transportation department;

E. procurement by the judicial branch of state government;

F. procurement by the legislative branch of state government;

G. procurement by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico;

H. procurement by the state fair commission of tangible personal property, services and construction under five thousand dollars ($5,000);

I. purchases from the instructional material fund;

J. procurement by all local public bodies;

K. procurement by regional education cooperatives;

L. procurement by charter schools; and

M. procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program."

Chapter 281 Section 17

Section 17. Section 22-2-6.3 NMSA 1978 (being Laws 1986, Chapter 94, Section 3, as amended) is amended to read:

"22-2-6.3. DEFINITIONS.--As used in the Public School Insurance Authority Act:

A. "authority" means the public school insurance authority;

B. "board" means the board of directors of the public school insurance authority;

C. "charter school" means a school organized as a charter school pursuant to the provisions of the 1999 Charter Schools Act;

D. "director" means the director of the public school insurance authority;

E. "educational entities" means state educational institutions as enumerated in Article 12, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions;

F. "fund" means the public school insurance fund;

G. "group health insurance" means coverage which includes but is not limited to life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;

H. "risk-related coverage" means coverage which includes but is not limited to property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance; and

I. "school district" means a school district as defined in Subsection K of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students."

Chapter 281 Section 18

Section 18. Section 22-2-6.6 NMSA 1978 (being Laws 1986, Chapter 94, Section 6, as amended) is amended to read:

"22-2-6.6. FUND CREATED--BUDGET REVIEW--PREMIUMS.--

A. There is created the "public school insurance fund". All income earned on the fund shall be credited to the fund. The fund is appropriated to the authority to carry out the provisions of the Public School Insurance Authority Act. Any money remaining in the fund at the end of each fiscal year shall not revert to the general fund.

B. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of Sections 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall invest the money in the fund that does not constitute the long-term reserves of the fund in accordance with the applicable provisions of Chapter 6, Article 10 NMSA 1978.

C. All appropriations shall be subject to budget review through the department of education, the state budget division of the department of finance and administration and the legislative finance committee.

D. The authority shall provide that premiums are collected from school districts and charter schools participating in the authority sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums shall be credited to the fund.

E. Any reserves remaining at the termination of an insurance contract shall be disbursed to the individual school districts, charter schools and other participating entities on a pro rata basis.

F. Disbursements from the fund for purposes other than procuring and paying for insurance or insurance-related services, including but not limited to third-party

administration, premiums, claims and cost containment activities, shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee; provided that the chairman of the board may sign vouchers if the position of director is vacant."

Chapter 281 Section 19

Section 19. Section 22-2-6.9 NMSA 1978 (being Laws 1986, Chapter 94, Section 9, as amended) is amended to read:

"22-2-6.9. PARTICIPATION--WAIVERS.--

A. School districts and charter schools shall participate in the authority, unless the school district or charter school is granted a waiver by the board.

B. In determining whether a waiver should be granted, the board shall establish minimum benefit and financial standards for the desired line of coverage. These minimum benefit and financial standards and the proposed time schedule for responsive offers shall be sent to all school districts and charter schools at the time the request for proposals for the desired line of coverage is issued. Any school district or charter school seeking a waiver of coverage shall match the minimum benefit and financial standards set forth in the request for proposals for the desired line of coverage. School districts and charter schools shall submit documentation of their proposals matching the board's minimum benefit and financial requirements prior to the deadline established by the board. The authority has the power to approve or disapprove a waiver of participation based on the documentation submitted by the school district or charter school regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district or charter school that requests a waiver and that has met the minimum benefit and financial standards within the time schedule established by the board. Once the board awards the insurance contract, no school district or charter school shall be granted a waiver for the entire term of the contract.

C. Any school district or charter school granted a waiver of participation for health insurance shall be required to petition for participation in other kinds of group insurance coverage and shall be required to meet the requirements established by the authority prior to participation in other kinds of group insurance coverage. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract. Provided, however, that if the authority contracts for a line or lines of coverage for a period of eight years, the board may establish procedures and preconditions for authorizing a school district or charter school which has been granted a waiver to again participate in the coverage after the expiration of the first four years of coverage.

D. Any school district or charter school granted a waiver of participation for workers' compensation shall be required to petition for participation in other risk-related

coverages and shall be required to meet the requirements established by the authority prior to participation in other kinds of risk-related coverages. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract.

E. Educational entities may petition the authority for permission to participate in the insurance coverage provided by the authority. To protect the stability of the fund, the authority shall establish reasonable terms and conditions for participation by educational entities.

F. A participating school district or charter school may separately provide for coverage additional to that offered by the authority.

G. The local school districts, charter schools or the authority, as appropriate, may provide for marketing and servicing to be done by licensed insurance agents or brokers who should receive reasonable compensation for their services."

Chapter 281 Section 20

Section 20. Section 22-2-6.10 NMSA 1978 (being Laws 1989, Chapter 373, Section 5) is amended to read:

"22-2-6.10. GROUP INSURANCE CONTRIBUTIONS.--

A. Group insurance contributions for school districts, charter schools and participating entities in the authority shall be made as follows:

(1) seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars ($15,000);

(2) seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars ($15,000) or more but less than twenty thousand dollars ($20,000);

(3) sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars ($20,000) or more but less than twenty-five thousand dollars ($25,000); or

(4) sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars ($25,000) or more.

B. Whenever a school district, charter school or participating entity in the authority offers to its employees alternative health plan benefit options, including but not limited to health maintenance organizations, preferred provider organizations or panel doctor plans, the school district, charter school or participating entity may pay an amount on

behalf of the employee and family member for the indemnity health insurance plan sufficient to result in equal employee monthly costs to the cost of the health maintenance organization plans, preferred provider organizations plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act. School districts, charter schools and participating entities in the authority may pay up to one hundred percent of the first fifty thousand dollars ($50,000) of term life insurance."

Chapter 281 Section 21

Section 21. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended by Laws 1993, Chapter 224, Section 2 and also by Laws 1993, Chapter 227, Section 9) is amended to read:

"22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an estimated budget for the school district and any charter schools in the district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the estimated budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The estimated budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. The estimated budget required by this section shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the estimated budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or the manual of accounting and budgeting of the department."

Chapter 281 Section 22

Section 22. Section 22-8-6.1 NMSA 1978 (being Laws 1993, Chapter 227, Section 8) is amended to read:

"22-8-6.1. CERTAIN SCHOOL DISTRICT BUDGETS.--Each charter school shall submit to the local school board a school-based budget. The budget shall be based upon the projected number of program units generated by that charter school and its students, using the at-risk index and the training and experience index of the district. The budget shall be submitted to the local school board for approval or amendment. The approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school budget is within the allotted resources. The local school board shall have no veto authority over individual line items within the charter school's proposed budget, but shall approve or disapprove the budget in its entirety. Upon final approval of the local budget by the local school board, the individual charter school budget shall be included separately in the budget submission to the department of education required pursuant to the Public School Finance Act and the 1999 Charter Schools Act."

Chapter 281 Section 23

Section 23. Section 22-8-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 70, as amended by Laws 1993, Chapter 224, Section 3 and also by Laws 1993, Chapter 227, Section 10) is amended to read:

"22-8-15. ALLOCATION LIMITATION.--

A. The department shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with authorized charter schools shall allocate the appropriate distributions of the public school fund to individual charter schools pursuant to each charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the charter school within five days after the school district's receipt of the state equalization guarantee for that month."

Chapter 281 Section 24

Section 24. Section 22-10-3.3 NMSA 1978 (being Laws 1997, Chapter 238, Section 1, as amended) is amended to read:

"22-10-3.3. BACKGROUND CHECKS.--

A. An applicant for initial certification shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department of education to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may

form the basis for the denial, suspension or revocation of a certificate for good and just cause. Records and any related information shall be privileged and shall not be disclosed to a person not directly involved in the certification or employment decisions affecting the specific applicant. The applicant for initial certification shall pay for the cost of obtaining the federal bureau of investigation record.

B. Local school boards shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school, including a charter school. An applicant for employment who has been initially certified within twelve months of applying for employment with a local school board or a charter school shall not be required to submit to another background check if the department of education has copies of his federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school, including a charter school, shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board to obtain his federal bureau of investigation record. The applicant who has been offered employment, contractor or contractor's employee at a public school, including a charter school, may be required to pay for the cost of obtaining a background check. At the request of a local school board or charter school, the department of education is authorized to release copies of federal bureau of investigation records that are on file with the department of education and that are not more than twelve months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and any related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or contractor's employee with unsupervised access to students at a public school, including a charter school.

C. The department of education shall implement the provisions of Subsection A of this section on or before July 1, 1998."

Chapter 281 Section 25

Section 25. REPEAL.--Sections 22-8A-1 through 22-8A-7 (being Laws 1993, Chapter 227, Sections 1 through 7) are repealed.

SENATE BILL 192, AS AMENDED

CHAPTER 282

RELATING TO LIVESTOCK; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE LIVESTOCK CODE TO MODERNIZE STATUTES

RELATING TO LIVESTOCK AND THE LIVESTOCK INDUSTRY; ELIMINATING AND PRESCRIBING POWERS AND DUTIES OF THE NEW MEXICO LIVESTOCK BOARD, INSPECTORS, LIVESTOCK OWNERS AND OTHERS DEALING WITH LIVESTOCK; CHANGING AND CHARGING FEES; STANDARDIZING ASSESSMENTS; EXTENDING THE SUNSET PROVISION; STANDARDIZING PENALTIES; MAKING AN APPROPRIATION.

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

Chapter 282 Section 1

Section 1. Section 77-2-1 NMSA 1978 (being Laws 1967, Chapter 213, Section 1, as amended) is amended to read:

"77-2-1. SHORT TITLE--PURPOSE.--Chapter 77, Articles 2 through 18 NMSA 1978 may be cited as "The Livestock Code". The Livestock Code shall be liberally construed to carry out its purposes, which are to promote greater economy, service and efficiency in the administration of the laws relating to the livestock industry of New Mexico, to control disease, to prevent the theft or illegal movement of livestock and to oversee the New Mexico meat inspection program."

Chapter 282 Section 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. "district" means a livestock inspection district;

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

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

P. "livestock inspector" means a certified inspector who is granted full law enforcement powers for enforcement of The Livestock Code;

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

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

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

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

Chapter 282 Section 3

Section 3. Section 77-2-7 NMSA 1978 (being Laws 1967, Chapter 213, Section 6, as amended) is amended to read:

"77-2-7. ADDITIONAL POWERS OF THE BOARD.--In addition to the powers transferred from the cattle and sheep sanitary boards, the board may:

A. exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and diseases and in order to protect the public from diseased or unwholesome meat or meat products;

B. appoint and fix the salary of an executive director who shall file an oath and be bonded in an amount fixed by the board. The director shall manage the affairs of the board under the direction of the board. He shall be chosen solely on qualifications and fitness for the office. He shall devote his entire time to the duties of the office;

C. employ clerical help, provide office space and purchase equipment, including vehicles;

D. employ livestock inspectors and brand inspectors and other personnel necessary to carry out the purposes of The Livestock Code. All livestock inspectors appointed by the board shall have the same powers as any other peace officer in the enforcement of that code;

E. appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board;

F. adopt and promulgate rules to control the importation and exportation of animals;

G. establish livestock inspection districts;

H. establish quarantine, provide its boundaries and give notice of the quarantine and do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from disease and prevent the spread of disease;

I. adopt and promulgate rules for meat inspection, including the slaughter and disposition of the carcasses of livestock affected with diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;

J. adopt and promulgate rules governing the importation, manufacture, sale, distribution or use within the state of serums, vaccine and other biologicals intended for diagnostic or therapeutic uses with livestock and regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting livestock;

K. set fees or charges, not to exceed one hundred dollars ($100) per call, for any services rendered by the board or its employees that are deemed necessary by the board and for which no fee has been set by statute;

L. consider the views of the livestock industry in the administration of The Livestock Code;

M. adopt and promulgate rules to otherwise carry out the purposes of The Livestock Code;

N. hold hearings and subpoena witnesses for the purpose of investigating or enforcing The Livestock Code or rules established pursuant to that code; and

O. enter into joint powers agreements with Indian nations, tribes or pueblos to promote cooperation in carrying out the provisions of The Livestock Code."

Chapter 282 Section 4

Section 4. Section 77-2-8 NMSA 1978 (being Laws 1969, Chapter 177, Section 1) is amended to read:

"77-2-8. RESEARCH AND PROMOTION OF MEAT AND MEAT PRODUCTS.--The board may enter into contracts for research into and promotion of meat and meat products. The contracts shall carry provisions for financing, and the board may accept and expend voluntary contributions from any source to finance the contracts. The provisions of this section shall not apply to or include cattle coming out of feed lots."

Chapter 282 Section 5

Section 5. Section 77-2-13 NMSA 1978 (being Laws 1891, Chapter 34, Section 9, as amended) is amended to read:

"77-2-13. RECORDS--CERTIFIED COPY EVIDENCE.--The records required to be kept by the director, including inspector reports, shall be maintained by the board in a readily available manner, and a certified copy of any such records under the hand and seal of the director or the verified oath of an inspector shall be prima facie evidence in all courts of this state of the truth of any fact required to be recorded therein."

Chapter 282 Section 6

Section 6. Section 77-2-14 NMSA 1978 (being Laws 1937, Chapter 205, Section 1, as amended) is amended to read:

"77-2-14. ATTORNEY--DUTIES.--The board may employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to livestock. The board shall fix the compensation to be paid to such attorney."

Chapter 282 Section 7

Section 7. Section 77-2-15 NMSA 1978 (being Laws 1937, Chapter 205, Section 2, as amended) is amended to read:

"77-2-15. SPECIAL TAXES--LEVY--COLLECTION.--

A. Each year the board of county commissioners of each county shall at its first meeting after the return of the assessment of the property for taxation by the county assessors of each county, levy a special tax at a rate to be fixed each year by the New Mexico livestock board. Subject to the provisions of Section 7-37-7.1 NMSA 1978, the New Mexico livestock board shall, in each year, order the levy of a tax on livestock at a rate not to exceed ten dollars ($10.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, of the livestock. The New Mexico livestock board may set different rates for individual classes of livestock.

B. The order imposing the levy of the tax shall be made on or before June 30 in each year and shall be certified to the department of finance and administration by the director. The department of finance and administration shall certify the amount of the levy to the board of county commissioners of each county, and the board of county commissioners shall include the levy in its annual levy of taxes. The special tax shall be collected in each county and paid to the state treasurer in the manner provided by law for the collection and payment of other state taxes. Such funds shall be remitted to the New Mexico livestock board for deposit in the interim receipts and disbursements fund."

Chapter 282 Section 8

Section 8. Section 77-2-22 NMSA 1978 (being Laws 1933, Chapter 53, Section 2, as amended) is amended to read:

"77-2-22. PENALTY FOR VIOLATING RULE.--Any person who violates a rule adopted under the power granted to the board unless the penalty has been fixed by law is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 9

Section 9. Section 77-2-28 NMSA 1978 (being Laws 1981, Chapter 5, Section 1, as amended) is amended to read:

"77-2-28. TERMINATION OF BOARD LIFE--DELAYED REPEAL.--

The New Mexico livestock board is terminated July 1, 2009 unless continued by the legislature pursuant to the Sunset Act. The board shall continue to operate according to all of the provisions of Chapter 77, Article 2 NMSA 1978 until July 1, 2010 for the

purpose of winding up its affairs. Effective July 1, 2010, Chapter 77, Article 2 NMSA 1978 is repealed."

Chapter 282 Section 10

Section 10. Section 77-2-29 NMSA 1978 (being Laws 1981, Chapter 357, Section 2, as amended) is amended to read:

"77-2-29. FEES.--The following fees shall be fixed by the board for services rendered pursuant to the provisions of The Livestock Code:

A. an inspection or permit fee not to exceed sixteen cents ($.16) per head to be charged for the importation or exportation of sheep and goats pursuant to Section 77-8-3 NMSA 1978 and a service charge in an amount not to exceed ten dollars ($10.00) for each inspection request; provided that the board shall not increase the fee more than four cents ($.04) in any one fiscal year;

B. a fee for recording a transfer of a brand pursuant to Section 77-9-7 NMSA 1978, as recompiled, in an amount not to exceed fifty dollars ($50.00);

C. a fee for recording a brand or researching a brand pursuant to Section 77-9-10 NMSA 1978, as recompiled, in an amount not to exceed fifty dollars ($50.00);

D. a fee for additional copies of certified copies of brands pursuant to Section 77-9-10 NMSA 1978, as recompiled, in an amount not to exceed five dollars ($5.00) per copy;

E. a fee for the recording of a holding brand pursuant to Section 77-9-16 NMSA 1978, as recompiled, in an amount not to exceed one hundred dollars ($100), which recording shall be valid for one year from the date of recording, and an additional fee in an amount not to exceed one hundred dollars ($100) for each annual renewal;

F. a fee for the rerecording of brands pursuant to Section 77-9-20 NMSA 1978, as recompiled, in an amount not to exceed fifty dollars ($50.00);

G. a fee for the inspection of livestock pursuant to Section 77-9-38 or 77-10-4 NMSA 1978 in an amount not to exceed fifty cents ($.50) per head and a service charge in an amount not to exceed ten dollars ($10.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents ($.10) in any one fiscal year;

H. a fee for the inspection of hides pursuant to Section 77-9-54 NMSA 1978 in an amount not to exceed fifty cents ($.50) per hide and a service charge in an amount not to exceed ten dollars ($10.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents ($.10) in any one fiscal year;

I. a fee for the handling of the proceeds of the sale of an estray pursuant to Section 77-13-6 NMSA 1978 in an amount not to exceed ten dollars ($10.00);

J. a fee for the impoundment of trespass livestock pursuant to Section 77-14-36 NMSA 1978 in an amount not to exceed ten dollars ($10.00) per head per day and a reasonable charge for the moving of trespass livestock pursuant to Section 77-14-36 NMSA 1978 to be set by the board;

K. a fee for the licensing of a livestock auction market pursuant to Section 77-10-2 NMSA 1978 in an amount not to exceed twenty-five dollars ($25.00);

L. a fee for issuing a transportation permit pursuant to Section 77-9-42 NMSA 1978 in an amount not to exceed fifty dollars ($50.00);

M. a fee for the licensing of a cattle or sheep rest station pursuant to Section 77-9A-2 NMSA 1978 in an amount not to exceed twenty-five dollars ($25.00); and

N. a fee for issuing a certificate of brand exemption pursuant to Section 77-8-22 or Section 77-9-3 NMSA 1978 in an amount not to exceed fifty dollars ($50.00)."

Chapter 282 Section 11

Section 11. Section 77-9-8 NMSA 1978 (being Laws 1895, Chapter 6, Section 4, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"REGISTRATION OF BRANDS AND MARKS--BOARD.--Except as otherwise authorized by the board, the board is the sole authority for the registration of brands, marks or electronic identification on livestock in this state."

Chapter 282 Section 12

Section 12. Section 77-9-9 NMSA 1978 (being Laws 1895, Chapter 6, Section 5, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"BRAND BOOKS.--The board shall keep a suitable record of all registered brands, marks and electronic identification used for the identification of livestock in this state."

Chapter 282 Section 13

Section 13. Section 77-9-10 NMSA 1978 (being Laws 1895, Chapter 6, Section 9, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"RECORDING BEFORE USE--RECORDING FEE--CONFLICTING BRANDS.--

A. A brand shall not be used until recorded. A facsimile of the brand and a recording fee fixed by the board shall be forwarded to the director. One certified copy of the recorded

brand shall be furnished to the owner of the brand by the director when the brand is recorded.

B. The director shall immediately record the brand unless it has been recorded previously or conflicts with a prior recorded brand. In that event, the director shall return the facsimile unrecorded and charge a fee for the research.

C. Additional certified copies of brands recorded may be obtained from the director by the payment of a fee to be fixed by the board in a sum not to exceed the amount prescribed by law."

Chapter 282 Section 14

Section 14. Section 77-9-11 NMSA 1978 (being Laws 1905, Chapter 30, Section 1, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"FEES--DISPOSITION.--The fees for recording or researching brands and for furnishing certified copies of the recording or research shall be placed to the credit of the New Mexico livestock board interim receipts and disbursements fund."

Chapter 282 Section 15

Section 15. Section 77-9-13 NMSA 1978 (being Laws 1895, Chapter 6, Section 12, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"BRAND BOOK.--The director shall publish a brand book in which shall be given a facsimile or copy of all brands recorded in the office of the board, together with the owner's name and address. The board may publish if it deems best to do so a limited number of brand books in addition to the number required by the provisions of this section and to sell them for such price as the board considers reasonable and proper. The price shall not be less than the actual cost."

Chapter 282 Section 16

Section 16. Section 77-9-14 NMSA 1978 (being Laws 1895, Chapter 6, Section 13, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"MORE THAN ONE BRAND UNLAWFUL--EXCEPTIONS--PENALTY.--

A. It is unlawful for an owner of livestock in originally marking or branding livestock to make use of or keep up more than one mark or brand; provided that an owner may own and possess livestock in different marks or brands if they were acquired by him by purchase or other lawful manner and evidenced by a bill of sale from the previous owner of the livestock having such brands or from the heirs, executors, administrators or legal representatives of the owner. Livestock so acquired shall be branded or marked as provided in The Livestock Code by and with the recorded brand or mark of the

person acquiring the livestock. It is lawful for the purpose of identification during the pendency of a mortgage or lien to brand the increase of the branded livestock in the recorded brand designated in the mortgage or lien.

B. A brand shall not be altered by placing another brand on it or in the same location.

C. A person who unlawfully brands livestock contrary to the provisions of The Livestock Code is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense."

Chapter 282 Section 17

Section 17. Section 77-9-15 NMSA 1978 (being Laws 1895, Chapter 6, Section 14, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"BRANDS OF MINORS.--Minors owning livestock separate from that of the parent or guardian may have a mark or brand, which shall be recorded in accordance with the requirement of The Livestock Code, but the parent or guardian shall be responsible for the proper use of the mark or brand by any minor."

Chapter 282 Section 18

Section 18. Section 77-9-16 NMSA 1978 (being Laws 1912, Chapter 55, Section 2, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"FILING OF FACSIMILE--DESIGNATION OF BRANDS--HOLDING BRAND RENEWAL AND FEE--BRANDING INCREASE--OFFENSES--PENALTY.--An owner of livestock desiring to use in branding a brand not already recorded in the office of the board shall file with the director a facsimile of the desired brand. The owner may record the desired brands as holding brands upon livestock so owned upon furnishing to the director a full description as to the number, class and locality of all livestock branded with the holding brand. A recorded holding brand may be used also on a show animal. A fee shall be charged for the recording of a holding brand, which recording shall be valid for a period of one year or until the described livestock depart the state, whichever comes first. The recording may be renewed for additional years by the payment of a fee at each yearly renewal; provided that it is unlawful for the owner to brand the increase of such livestock in any other brand than the recorded brand of the owner except in the case of mortgaged livestock as provided in Section 77-9-14 NMSA 1978, as recompiled. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense."

Chapter 282 Section 19

Section 19. Section 77-9-20 NMSA 1978 (being Laws 1923, Chapter 146, Section 1, as amended) is recompiled in Chapter 77, Article 2 NMSA 1978 and is amended to read:

"RE-RECORDING OF BRANDS--NOTICE--PUBLICATION--FEES.--

A. The board shall cause all brands now on record to be re-recorded whenever the board deems necessary to clear records of unused brands. For this purpose, the board shall mail a notice, addressed to each owner of a brand now of record with the board at the current address shown on the brand record, requiring the owners of brands to file with the director any brand being on record to the owners. In addition to this notice, the board shall publish in either English or Spanish or both in at least one newspaper in each county in this state where there is a newspaper a copy of the notice to re-record. The publication shall continue for at least four consecutive weeks.

B. Within three months from the date of the first publication of the notice to re-record, owners of brands of record in the office of the board shall file with the director the brands in actual use and recorded by them and pay the re-recording fee. The fees shall be deposited in the proper fund of the board. Re-recording shall not be required more often than once in a three-year period."

Chapter 282 Section 20

Section 20. Section 77-3-1 NMSA 1978 (being Laws 1909, Chapter 9, Section 1, as amended) is amended to read:

"77-3-1. DISEASES--INSPECTION--QUARANTINE.--

A. The board may use all proper means to prevent the spreading of dangerous and fatal diseases among livestock and for the extirpation of such diseases. If a disease breaks out in the state, it is the duty of all persons owning or having in their charge livestock infected to immediately notify the board of the existence of such disease. The board shall cause proper examination to be made by a veterinarian and, if the disease is found to be a dangerously contagious or infectious malady, the board shall order the diseased livestock that have been exposed to be strictly quarantined and shall order any premises or farms where such disease exists or has recently existed to be put in quarantine so that no livestock subject to the disease is removed from or brought to the premises or places so quarantined. The board shall prescribe such rules as it deems necessary to prevent the disease from being communicated in any way from the premises so quarantined.

B. The board may expend funds to prevent, suppress, control or eradicate any disease or parasite of livestock that the board has by rule declared to be a disease or pest of significant economic impact to any segment of the livestock industry. This power shall include the right to purchase and destroy or sell infected or exposed livestock.

C. Whenever the board finds any livestock infested with a disease or pest declared by the board to be of significant economic impact, the board may request the governor to declare an emergency as provided in Section 6-7-3 NMSA 1978."

Chapter 282 Section 21

Section 21. Section 77-3-2 NMSA 1978 (being Laws 1909, Chapter 9, Section 2, as amended) is amended to read:

"77-3-2. REPORT OF DISEASED LIVESTOCK--OFFENSES--EXPENSE RECOVERY--DUTIES OF SHERIFFS--PENALTY.--

A. A person who has in his possession or under his care any livestock that he knows or has reason to believe is affected with a disease shall without unnecessary delay tell the board or some member of the board or the sheriff of the county in which the livestock is situate. The sheriff shall immediately notify the director.

B. A person shall not bring into this state or sell or dispose of any livestock known to be affected or exposed to disease or move diseased or exposed livestock from quarantine or move any livestock to or from a district in the state declared to be infected with a disease or bring into this state any diseased livestock from a district outside the state that may at any time be legally declared to be affected with such disease without the consent of the board.

C. A person who violates a provision of Subsection A or B of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each head illegally moved.

D. Any guard or other proper expenses incurred in the quarantining of the livestock shall be paid by the owner, and if the same is refused, after demand made by order of the board, an action may be brought to recover the same with costs of suit, which action may be brought in the name of the state for the use of the board. It is the duty of all sheriffs to execute all lawful orders of the board."

Chapter 282 Section 22

Section 22. Section 77-3-5 NMSA 1978 (being Laws 1917, Chapter 30, Section 1, as amended) is amended to read:

"77-3-5. INFECTED PASTURES AND BUILDINGS--NOTICES.--

A. If a pasture, building, corral, yard or enclosure where livestock have been or may be pastured or confined is infected with or has become dangerous on account of a disease or poisonous weed or plant, the board may post danger or quarantine notices in not less than two conspicuous places in or upon such pasture, building, corral, yard or enclosure sufficient to warn all owners and others in charge of livestock of the danger or quarantine. When the danger has passed or the quarantine is lifted, the board shall require the posted notices to be removed.

B. Except as authorized by the director, a person who removes a posted notice of danger or quarantine is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA."

Chapter 282 Section 23

Section 23. Section 77-3-8 NMSA 1978 (being Laws 1909, Chapter 9, Section 8, as amended) is amended to read:

"77-3-8. DESTRUCTION OF DISEASED LIVESTOCK--PAYMENT TO THE OWNER--APPRAISAL.--In cases where the board deems it necessary to destroy any diseased, infected or exposed livestock in order to prevent the spread of dangerous and fatal diseases such as glanders, farcy, tuberculosis, pleuro-pneumonia, rinderpest, foot and mouth disease or any other dangerous and fatal disease, foreign or other, which according to the rules, regulations and standards adopted by the United States department of agriculture animal and plant health inspection service cannot be extirpated by means other than the destroying of the diseased, infected or exposed livestock, the board may have the livestock killed and burned or buried under such rules as the board may prescribe. The board shall cooperate with the United States department of agriculture in paying to the owners of the slaughtered livestock the allowed indemnity determined by the United States department of agriculture animal and plant health inspection service and the board."

Chapter 282 Section 24

Section 24. Section 77-3-9 NMSA 1978 (being Laws 1909, Chapter 9, Section 4, as amended) is amended to read:

"77-3-9. ACCEPTANCE OF FEDERAL RULES AND REGULATIONS--COOPERATION.--The board may accept on behalf of the state the rules and regulations prepared by the secretary of the United States department of agriculture relating to the control of diseases of livestock and to cooperate with the authorities of the United States in the enforcement of the provisions of all acts and regulations relating to diseased livestock."

Chapter 282 Section 25

Section 25. Section 77-3-10 NMSA 1978 (being Laws 1909, Chapter 9, Section 5, as amended) is amended to read:

"77-3-10. FEDERAL OFFICERS--POWERS.--The representatives of the United States department of agriculture animal and plant health inspection service under the specific authorization of the board may inspect, quarantine and condemn livestock affected with a disease or suspected of being affected with a disease or that have been exposed to a disease and for these purposes may enter any grounds or premises in the state. The representatives may call upon peace officers to assist them in the discharge of their

duties as specified by the board in carrying out federal laws and regulations as provided in Section 77-3-9 NMSA 1978. The peace officers shall assist the representatives when so requested and authorized by the board."

Chapter 282 Section 26

Section 26. Section 77-3-11 NMSA 1978 (being Laws 1949, Chapter 48, Section 1, as amended) is amended to read:

"77-3-11. MARKING OR BRANDING OF CATTLE AND BISON FOUND INFECTED WITH TUBERCULOSIS OR BANG'S DISEASE.--Whenever cattle or bison within this state are tested for tuberculosis or Bang's disease by the board or its agents or employees or by an authorized agent or employee of the United States department of agriculture animal and plant health inspection service, if an animal so tested is found to have a positive reaction to such tests, it shall be permanently marked or branded according to the requirements of the board by the owner or his agent. The type of mark or brand to be used shall be designated by the board, and an animal shall be marked or branded immediately upon instructions from the board."

Chapter 282 Section 27

Section 27. Section 77-3-12 NMSA 1978 (being Laws 1949, Chapter 48, Section 2, as amended) is amended to read:

"77-3-12. PENALTY.--A person who fails to identify his animals as required by Section 77-3-11 NMSA 1978 is guilty of a misdemeanor for each head in violation and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 28

Section 28. Section 77-3-13 NMSA 1978 (being Laws 1889, Chapter 106, Section 8, as amended) is amended to read:

"77-3-13. DANGEROUS EPIDEMICS--EMERGENCY RULES--IMPORTS PROHIBITED--PENALTY.--

A. When the board or any of its authorized representatives finds that a disease, the nature of which is known to be fatal or highly injurious to livestock, pigeons or fowl of any kind, has become epidemic or exists in a locality in a country, state or territory beyond the limits of this state, the board shall immediately adopt and promulgate emergency rules to prohibit the importation into this state of any animals, including livestock, subject to the disease that may be so reported.

B. The board shall specify such restrictions and safeguards as it deems proper and shall specify for the protection of livestock in this state and may also prohibit the

importation into this state of any hoofs, hides, skins or meat of any animals or any hay, straw fodder, cottonseed or other products or material calculated to carry the infection of such disease.

C. Emergency rules may be adopted and promulgated without the notice and hearing required of other rules and shall take effect immediately. If the board contemplates that an emergency rule will be in effect for longer than ninety days, it shall give notice and hold a hearing to adopt the emergency rule as a rule.

D. Any person who violates any provision of this section or an emergency rule issued in accordance with this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each head and is also liable in a civil action for any damages and loss sustained by reason of such importation of the livestock or of any of the products provided for in this section."

Chapter 282 Section 29

Section 29. Section 77-3-14 NMSA 1978 (being Laws 1889, Chapter 106, Section 9, as amended) is amended to read:

"77-3-14. HEALTH CERTIFICATE--INSPECTION--PERMIT--PENALTY.--

A. After the issuance of an emergency rule pursuant to the provisions of Section 77-3-13 NMSA 1978 and while the emergency rule continues in force, it is unlawful for a person to drive or transport or cause to be driven or transported into this state any livestock that by any direct or circuitous route might have come from any place or district covered by the emergency rule without first having obtained a certificate of health from a veterinarian or a permit in writing from the board under such rules as the board prescribes.

B. A person failing to comply with this provision is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and is also personally liable for all loss and damages sustained by any persons by reason of the introduction of a disease from the livestock unlawfully imported into this state.

C. During the time covered by the emergency rule, all livestock desiring to enter the state shall submit to an inspection and shall not be permitted to enter the state until a written or printed permit is issued by the board. A livestock inspector or other agent of the board may require the person in charge of the livestock to produce the permit for his inspection, and any person refusing to produce the permit at any time within a year from the time the livestock were driven in is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 30

Section 30. Section 77-3-14.1 NMSA 1978 (being Laws 1993, Chapter 248, Section 28) is amended to read:

"77-3-14.1. AGID TESTS REQUIRED.--The board shall adopt rules prohibiting the driving or transporting into this state of any horses or other equidae that have not tested negative to the AGID, or Coggins, test or a United States department of agriculture-approved equivalent test for equine infectious anemia within twelve months prior to the date of entry, the evidence of which test result shall be shown on a health certificate; excepting from regulation only those foals accompanied in shipment by a negative-tested dam, those horses or other equidae consigned directly to slaughter."

Chapter 282 Section 31

Section 31. Section 77-4-1 NMSA 1978 (being Laws 1905, Chapter 31, Section 1, as amended) is amended to read:

"77-4-1. DISEASE ERADICATION--RULES.--The board shall determine the existence of and employ the most efficient and practical means to prevent, suppress, control and eradicate the disease known as mange or scabies or any other disease among livestock and to direct and regulate the handling or treating of any livestock when infected or that it may have good reason to believe has been exposed to any of the diseases; to make and adopt quarantine and sanitary rules that, so far as practicable, conform to the regulations of the United States department of agriculture as they may be from time to time promulgated; and to create and define districts within which such disease exists. In determining the districts within this state in which such disease from time to time exists, the board shall cooperate with the United States department of agriculture. The costs of treatment of livestock pursuant to this section are the responsibility of the owner of the livestock."

Chapter 282 Section 32

Section 32. Section 77-4-8 NMSA 1978 (being Laws 1905, Chapter 31, Section 8, as amended) is amended to read:

"77-4-8. OFFENSES--PENALTY.--A person who willfully violates any provisions of Sections 77-4-1 through 77-4-8 NMSA 1978 or rules promulgated in conformity with those sections or who in any manner hinders, obstructs or resists the execution of a rule or hinders, obstructs or resists an officer or employee of the board in the discharge of his duty or in the exercise of his lawful powers or who willfully or negligently breaks any quarantine or willfully or negligently suffers any quarantined livestock to escape from any quarantine is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 33

Section 33. Section 77-5-1 NMSA 1978 (being Laws 1929, Chapter 159, Section 1, as amended) is amended to read:

"77-5-1. TUBERCULOSIS--EXAMINATIONS.--The board may make tests and examinations for the purpose of ascertaining whether any domestic livestock in the state are affected with tuberculosis. The tests or examinations shall be made by veterinarians of the board, inspectors of the United States department of agriculture animal and plant health inspection service or other veterinarians authorized by the board to perform the tests and examinations."

Chapter 282 Section 34

Section 34. Section 77-5-2 NMSA 1978 (being Laws 1929, Chapter 159, Section 2, as amended) is amended to read:

"77-5-2. INFECTED LIVESTOCK--DESTRUCTION.--If, upon making any tests or examinations as provided for in Chapter 77, Article 5 NMSA 1978, it appears that any livestock are infected with tuberculosis and that the public interest would be best served through the destruction of the livestock, the board shall cause the destruction of the livestock in a manner deemed most expedient."

Chapter 282 Section 35

Section 35. Section 77-5-5 NMSA 1978 (being Laws 1929, Chapter 159, Section 5) is amended to read:

"77-5-5. OFFENSES--PENALTY.--A person, whether acting as a common carrier or otherwise, who brings into New Mexico any dairy cattle of the kind described in Section 77-5-4 NMSA 1978 in violation of the provisions of Chapter 77, Article 5 NMSA 1978 or of any of the rules promulgated by the board for the enforcement of that article is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 36

Section 36. Section 77-8-2 NMSA 1978 (being Laws 1951, Chapter 188, Section 11) is amended to read:

"77-8-2. QUARANTINE--TREATMENT.--Sheep or goats afflicted with or exposed to a disease shall be immediately placed under quarantine under the supervision of a veterinarian or inspector in conformity with the rules of the board. The sheep or goats shall not be moved from the quarantine area except under the supervision of a veterinarian or inspector until a veterinarian declares them to be free of disease or until the board otherwise grants permission for the moving of the sheep or goats. The sheep or goats shall be treated under the direction of a veterinarian or inspector at once and

thereafter as often as necessary until they are declared free of the disease by a veterinarian or inspector."

Chapter 282 Section 37

Section 37. Section 77-8-3 NMSA 1978 (being Laws 1951, Chapter 188, Section 12, as amended) is amended to read:

"77-8-3. IMPORTATION--NOTICE--INSPECTION--FEES.--

A. A person intending to bring sheep or goats into the state from another country or state shall give notice of his intention to the director by certified letter or delivery in person or by telephone to the director or other authorized official of the board so that the notice is received prior to the proposed day of entry. The notice shall state the number of head, the date and place the sheep or goats will be loaded and their destination. The director shall then issue a permit for entry of the sheep or goats into the state, stating in the permit the applicable board rules to be complied with before or after entry into the state.

B. The shipment shall be accompanied by a health certificate issued by a federal or state inspector or authorized veterinarian that the sheep or goats are healthy and free from disease. On arrival, the owner or person in charge of the sheep or goats shall not commingle the imported sheep or goats or release them to pasture until the inspector examines the sheep or goats as to their sanitary condition and inspects and makes a record of all the marks and brands on the sheep or goats, which record shall be forwarded to the board office and used for future reference. The inspector shall issue the owner or person in charge of the sheep or goats a copy of the brand inspection certificate if the inspector is satisfied all requirements have been met.

C. An inspection fee to be fixed by the board shall be charged and paid by the owner or person in charge of the sheep or goats to the board and received by the inspector for the inspection and certificates. If the inspector suspects that the sheep or goats are infected with a disease or finds that the owner or person in charge has not met the entry requirements, the inspector shall require the owner or the person in charge to comply with the provisions of Section 77-8-2 NMSA 1978 or other applicable statutes and rules. The provisions of this section shall not apply to sheep or goats loaded on transport vehicles that are being transported from some country or state to another country or state through New Mexico if the sheep or goats are not to be unloaded in this state except in approved rest stations or other quarantine pens for the purpose of feeding and watering the sheep or goats for a period of time not to exceed twenty-four hours."

Chapter 282 Section 38

Section 38. Section 77-8-5 NMSA 1978 (being Laws 1951, Chapter 188, Section 14) is amended to read:

"77-8-5. INFECTED SHEEP OR GOATS--NOTICE TO BOARD.--A person who owns or has under his control sheep or goats that have been exposed to or infected with a reportable disease shall forthwith report such fact to the director. A veterinarian shall be immediately dispatched to examine the sheep or goats and, if found to be so exposed or infected, the veterinarian or inspector shall follow the quarantine and treating provisions set forth in Section 77-8-2 NMSA 1978."

Chapter 282 Section 39

Section 39. Section 77-8-7 NMSA 1978 (being Laws 1951, Chapter 188, Section 16, as amended) is amended to read:

"77-8-7. EXPORTATION--NOTICE--INSPECTION AND PERMIT FEES--PENALTY.--

A. A person intending to ship sheep or goats beyond the limits of the district or the limits of the state shall give notice of his intention to the director or to the inspector for his district by certified letter or by delivery in person or by telephone to the director or inspector so that the notice is received in a reasonable time previous to the proposed date of shipment. The notice shall state the date and place that the sheep or goats will be loaded and destination of the sheep or goats. The board may require an inspector to inspect the sheep or goats as to their sanitary conditions and make a record of all the marks and brands upon the sheep or goats or the board may provide by rule an alternate means of allowing the movement of sheep or goats. The inspector shall not allow sheep or goats bearing any of the marks declared by the law of this state to be unlawful to be shipped except under express authority of the board. The inspector shall also require each person shipping sheep or goats to exhibit a bill of sale executed as provided by Section 77-8-15 NMSA 1978 or authority in writing to ship the sheep or goats from the recorded owner of all marks and brands upon the sheep or goats unless the person is himself the recorded owner of the marks and brands.

B. The inspector shall issue to the shipper a New Mexico livestock board form-1 certificate of inspection or other document or permit approved by the board if he is fully satisfied that the sheep or goats are free from disease and that the person shipping has rightful ownership of the sheep or goats as evidenced by the brands or marks and bill of sale or has complied with the board's alternative method as provided for in this section and all other applicable rules of the board. This certificate or permit shall authorize the shipping of the sheep and goats out of the state.

C. A fee to be fixed by the board in a sum not to exceed the amount prescribed by law shall be charged for the inspection and certificates, and the inspector shall refuse to issue the certificates until he has been paid the fee. The board shall charge a fee not to exceed the amount prescribed by law for issuing the permits allowed in this section in lieu of inspection. The inspector shall make a report to the director after each inspection of any matters contained in this section that may be required of him by the director.

D. A person who knowingly ships sheep or goats from one district to another district without an inspection certificate is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978. A person who knowingly ships sheep or goats outside the state without an inspection certificate is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978."

Chapter 282 Section 40

Section 40. Section 77-8-14 NMSA 1978 (being Laws 1951, Chapter 188, Section 26) is amended to read:

"77-8-14. ALTERING MARKS OR BRANDS.--No person shall alter the mark or brand on his or any other sheep or goats, without first having secured written permission from the director and unless an inspector is present to supervise the alteration."

Chapter 282 Section 41

Section 41. Section 77-8-15 NMSA 1978 (being Laws 1951, Chapter 188, Section 27) is amended to read:

"77-8-15. BILLS OF SALE--EVIDENCE OF LARCENY.--

A. A duly executed bill of sale is an instrument in writing by which the owner or his authorized agent transfers to the buyer the title to the sheep or goat described in the bill of sale and guarantees to defend the title against all lawful claims. It shall fully describe in detail the sheep or goat, and such description shall include marks, brands and all other identification. The bill of sale shall be executed the day of the transaction.

B. A purchase sheet properly executed by a licensed livestock auction market constitutes a valid bill of sale.

C. A registration certificate issued by a recognized pure-bred association, properly identifying the animal and properly acknowledged by the secretary of the association, may be used as proof of ownership.

D. An inspection certificate executed as a bill of sale and certified by inspector may be used as proof of ownership.

E. A person shall not sell or buy sheep or goats unless a bill of sale is provided. The possession by a person of sheep or goats having any mark or brand not his recorded mark or brand unless he has a bill of sale or authority in writing to possess or sell such sheep or goats shall be taken as prima facie evidence that he committed larceny of the sheep or goats and shall be sufficient for his conviction of larceny unless the evidence shows his innocence."

Chapter 282 Section 42

Section 42. Section 77-8-16 NMSA 1978 (being Laws 1951, Chapter 188, Section 28) is amended to read:

"77-8-16. REPORT OF ESTRAY SHEEP OR GOATS--SALE.--A person finding estray sheep or goats shall immediately report them to an inspector or the director and deliver them to an inspector upon demand. If the mark or brand on the sheep or goat is recorded in the board office, the director shall notify the owner of record and make arrangements to deliver the sheep or goats to the owner of record if he is the actual owner. If the owner of record no longer owns the sheep or goats, the director shall deliver them to the subsequent purchaser who can prove ownership with a valid bill of sale. In either case, delivery shall be conditioned upon payment by the claimant of all costs incurred in keeping the sheep or goats and such other expenses as may have been necessarily incurred. If the owner cannot be ascertained after diligent inquiry, the director shall order an inspector to sell them to the person paying the highest cash price for them after giving general or special notice or advertising as the director deems necessary under the circumstances. The money arising from the sale shall be used first to defray the costs and expenses in keeping and advertising the sheep or goats and those incurred in the sale. The residue, if any, shall be placed in the board fund; provided, however, that if at any time within two years after the sale any person shall prove ownership of the sheep or goats at the time they

became lost, the residue shall be paid to him."

Chapter 282 Section 43

Section 43. Section 77-8-18 NMSA 1978 (being Laws 1951, Chapter 188, Section 30) is amended to read:

"77-8-18. PENALTIES.--A person who violates the provisions of Section 77-8-2, 77-8-3, 77-8-14 or 77-8-22 NMSA 1978 or rules adopted pursuant to any of those sections is guilty of a misdemeanor for each head and, upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 44

Section 44. Section 77-8-20 NMSA 1978 (being Laws 1963, Chapter 129, Section 6) is amended to read:

"77-8-20. COMMUTING SHEEP OR GOATS--FEES.--

A. For the purpose of this section, "commuting sheep or goats" means sheep or goats that are transferred from New Mexico to some other state with which New Mexico shares a common boundary and back again or from some other state that shares a common boundary with New Mexico, to New Mexico and back again:

(1) during any twelve-month period;

(2) by one owner; and

(3) for the purpose of seasonal grazing, breeding, lambing or kidding on lands owned or leased by that owner in the course of his normal operations in each of the two states.

B. Owners of commuting sheep or goats shall have them inspected for each movement and shall pay the inspection fees for the sheep or goats normally required by law."

Chapter 282 Section 45

Section 45. A new Section 77-8-22 NMSA 1978 is enacted to read:

"77-8-22. NECESSITY OF BRANDING OR MARKING SHEEP AND GOATS.--

A. A person owning sheep or goats shall have and adopt a brand for them except for registered sheep or goats that are properly identified by legible tattoos and whose owner has been issued a certificate of brand exemption for his flock by the board. The brand shall be applied by any method approved by the board. Each brand shall be recorded in the office of the board. The board may provide for the use of a mark in lieu of the owner's brand if the mark is recorded in conjunction with the brand.

B. Unbranded or unmarked sheep or goats, except offspring with a branded or marked mother, shall be subject to seizure by a peace officer or inspector and shall be handled and disposed of in the same manner as is provided for the handling and disposal of estrays.

C. Sheep or goats that are purchased shall be rebranded or remarked by the new owner with his recorded brand or mark within thirty days of the purchase date unless he is given special permission by the board or the former owner to use the former owner's recorded brand or mark on the sheep or goats."

Chapter 282 Section 46

Section 46. A new section of Chapter 77, Article 9 NMSA 1978 is enacted to read:

"DEFINITION.--As used in Chapter 77, Article 9 NMSA 1978, "livestock" means horses, asses, mules, cattle or bison."

Chapter 282 Section 47

Section 47. Section 77-9-3 NMSA 1978 (being Laws 1895, Chapter 6, Section 1, as amended) is amended to read:

"77-9-3. NECESSITY OF BRAND--REBRANDING REQUIRED-- EXCEPTIONS.--

A. A person who owns livestock shall have and adopt a brand for them. The brand shall be applied with a hot iron on each animal except registered livestock that are properly identified by a legible tattoo and whose owner has been issued a certificate of brand exemption for his herd by the board. Each brand shall be recorded in the office of the board.

B. Unbranded livestock, except offspring with a branded mother or offspring with a mother properly identified as provided in Subsection F of this section, shall be subject to seizure by a peace officer or livestock inspector and shall be handled and disposed of in the same manner as is provided for the handling and disposal of estrays.

C. Livestock that is purchased shall be rebranded by the new owner with his recorded brand within thirty days, except as provided in Section 77-9-4 NMSA 1978.

D. Subsection A of this section shall not apply to a person owning horses, mules or asses who has been issued a transportation permit as provided in Section 77-9-42 NMSA 1978 or who has a registration certificate for an animal from a recognized breed association or to any person owning horses, mules or asses that have been identified by a freeze mark or a freeze brand recorded with the board. Freeze branding or freeze mark identification requires an iron, first submerged in a bath of liquid nitrogen, to be applied on each animal, resulting in a permanent loss of color in the hair or cessation of hair growth where the brand or mark has been applied.

E. This section does not apply to bison.

F. This section does not apply to a person who owns cattle in confinement at a dairy or feedlot and who has elected to identify his cattle by an alternative means approved by the board for cattle held in those facilities. If cattle held in confinement and identified in accordance with this subsection are removed from confinement and otherwise held in the state, the provisions of Subsection A of this section shall be met prior to removal, unless the cattle are being delivered to an approved auction."

Chapter 282 Section 48

Section 48. Section 77-9-4 NMSA 1978 (being Laws 1961, Chapter 4, Section 1, as amended) is amended to read:

"77-9-4. PENALTY FOR FAILURE TO BRAND OR REBRAND--CERTAIN SALES PROHIBITED.--

A. All livestock required to be branded pursuant to the provisions of Section 77-9-3 NMSA 1978 shall bear the identical and complete brand recorded in the name of the present owner with the board or, in the alternative, the livestock shall bear the identical and complete brand of a former owner as recorded with the board, in which case, the livestock shall be accompanied by a bill of sale from the former owner to the person

claiming to be the present owner, which bill of sale meets the requirements of Section 77-9-22 NMSA 1978.

B. The bill of sale shall contain a written statement by the former owner granting permission to the present owner to use the recorded brand appearing on the livestock, listed in the bill of sale and filed with the board; otherwise the livestock shall be rebranded within thirty days from the date of purchase.

C. A person shall not sell, buy or receive any livestock in the state unless the livestock is branded or has other means of identification acceptable to the board except livestock directly imported from another state. Except as provided in Section 77-9-16 NMSA 1978, as recompiled, all livestock shall be branded with a New Mexico brand within thirty days of entry into the state.

D. A person who violates the provisions of either Section 77-9-3 NMSA 1978 or this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with Section 31-19-1 NMSA 1978 for each head."

Chapter 282 Section 49

Section 49. Section 77-9-5 NMSA 1978 (being Laws 1895, Chapter 6, Section 2, as amended) is amended to read:

"77-9-5. BRANDS OF LIVESTOCK--RECORDING--EVIDENCE OF OWNERSHIP.--No brands of livestock except those recorded pursuant to the provisions of The Livestock Code and are peeled shall be recognized in law as evidence of ownership of the livestock upon which the brand is used unless the owner has other means of identification, including freeze brands and freeze mark identification, that is recognized as evidence of ownership for horses, mules or asses."

Chapter 282 Section 50

Section 50. Section 77-9-22 NMSA 1978 (being Laws 1971, Chapter 196, Section 2) is amended to read:

"77-9-22. BILLS OF SALE--REQUIREMENTS--EVIDENCE OF LARCENY.--

A. A duly executed bill of sale is an instrument in writing by which the owner or his authorized agent transfers to the buyer the title to livestock described in the bill of sale and guarantees to defend the title against all lawful claims. It shall fully describe in detail the livestock, and such description shall include marks, brands and all other identification.

B. The bill of sale shall be executed the day of the transaction.

C. A purchase sheet properly executed by a licensed livestock auction market constitutes a valid bill of sale.

D. A registration certificate issued by a recognized pure-bred association, properly identifying the animal and properly acknowledged by the secretary of the association, may be used as proof of ownership.

E. An inspection certificate executed as a bill of sale and certified by an inspector may be used as proof of ownership.

F. The possession by any person of livestock having a brand not his recorded brand unless he has a bill of sale or authority in writing to possess or sell the livestock shall be take as prima facie evidence that he committed larceny of the livestock except in instances where stray or injured animals are inadvertently impounded and shall be sufficient for his conviction of larceny unless the evidence shows his innocence."

Chapter 282 Section 51

Section 51. Section 77-9-23 NMSA 1978 (being Laws 1884, Chapter 47, Section 13, as amended) is amended to read:

"77-9-23. BILL OF SALE OF LIVESTOCK--DUTY TO EXHIBIT--VIOLATION--PENALTY.--

A. A person who has purchased or received or has in his possession any livestock either for himself or another shall exhibit the bill of sale for the livestock at the reasonable request of an inspector or other peace officer. A person who fails to produce the bill of sale required in Section 77-9-21 NMSA 1978 or who is unable to exhibit other written evidence of ownership or legal possession is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. A person who has purchased or received or has in his possession any livestock either for himself or another and who cannot produce proof of ownership as required by Subsection A of this section shall have the livestock impounded. If sufficient proof of ownership has not been established to the satisfaction of the board within fifteen days of the impoundment, the impounded livestock will be handled and disposed of in the same manner as provided for the handling and disposal of estrays."

Chapter 282 Section 52

Section 52. Section 77-9-26 NMSA 1978 (being Laws 1921, Chapter 159, Section 1, as amended) is amended to read:

"77-9-26. SALE BY PERSON NOT BRAND OWNER--BILL OF SALE.--A person in this state who sells, transfers or delivers to another person in this state any livestock that is not branded or marked with the brand or mark of the person selling, transferring or

delivering the livestock shall deliver to the person buying or receiving the livestock a bill of sale showing from whom the livestock was received as provided in Section 77-9-22 NMSA 1978."

Chapter 282 Section 53

Section 53. Section 77-9-27 NMSA 1978 (being Laws 1921, Chapter 159, Section 2, as amended) is amended to read:

"77-9-27. VIOLATION--PENALTY.--A person who violates the provisions of Section 77-9-26 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each head in offense."

Chapter 282 Section 54

Section 54. Section 77-9-28 NMSA 1978 (being Laws 1943, Chapter 11, Section 1, as amended) is amended to read:

"77-9-28. IMPORTATION OF LIVESTOCK--PERMIT REQUIRED--PENALTY.--

A. A person who brings livestock into this state by any manner or causing them to be brought in shall, before doing so, obtain a permit from the board or its authorized representative. The permit shall contain a list of all the requirements of the board to be complied with before the livestock can be brought into the state and shall also stipulate any requirements of further tests of the livestock for disease after the livestock are within the state if required by the board. The permit shall accompany the livestock at the time they enter the state, and the requirements set forth in the permit as to tests for diseases or otherwise shall be complied with in every particular before the livestock are permitted to enter. The owner or his agent shall make application to the proper inspector to inspect the imported livestock. The imported livestock shall not be commingled or released to pasture without inspection, except as authorized by the inspector.

B. No prior permits are required for livestock transported directly to international import receiving facilities that are inspected for health of livestock contained in the facilities by the United States department of agriculture or other agency of the United States. Livestock entering at these facilities from a foreign country shall be inspected by an inspector.

C. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978 for each head in offense."

Chapter 282 Section 55

Section 55. Section 77-9-29 NMSA 1978 (being Laws 1891, Chapter 34, Section 2, as amended) is amended to read:

"77-9-29. INSPECTION RULES.--In the exercise of the powers and performance of the duties conferred and prescribed by Sections 77-9-30 through 77-9-36 NMSA 1978, the board shall make all necessary rules respecting the inspection of livestock intended for shipment or to be driven from a district or beyond the limits of this state and also respecting the inspection of hides and slaughterhouses in this state."

Chapter 282 Section 56

Section 56. Section 77-9-30 NMSA 1978 (being Laws 1891, Chapter 34, Section 3, as amended) is amended to read:

"77-9-30. EXPORTED LIVESTOCK--INSPECTION OF BRANDS AND EAR MARKS--RECORD.--The board shall cause the brands and ear marks upon livestock shipped or driven from a district or out of this state to be inspected and a true and correct record of the result of such inspections to be kept in the office of the director for three years. The record shall set forth the date of the inspection; the place where and the person by whom made; the name and current address of the owner, shipper or claimant of the livestock inspected or the names and current addresses of all persons in charge of the livestock at the time of the inspection; the destination of the livestock; a list of all brands and ear marks upon the livestock inspected; and the number and classification of the livestock."

Chapter 282 Section 57

Section 57. Section 77-9-31 NMSA 1978 (being Laws 1891, Chapter 34, Section 4, as amended) is amended to read:

"77-9-31. EXPORT LIVESTOCK TO BE INSPECTED--PENALTIES.--

A. A person shipping or driving or receiving for shipment or driving any livestock from a district or out of this state shall hold the livestock for inspection as provided by law, and it is unlawful for any person to ship, drive or in any manner remove beyond the boundaries of the district or this state any livestock until they have been inspected except as provided in Section 77-9-42 NMSA 1978.

B. A person who knowingly ships, drives or receives for shipment or driving livestock from one district to another without an inspection is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. A person who knowingly ships or drives or receives for shipment or driving livestock out of state without an inspection is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978."

Chapter 282 Section 58

Section 58. Section 77-9-32 NMSA 1978 (being Laws 1891, Chapter 34, Section 6, as amended) is amended to read:

"77-9-32. INSPECTION OF LIVESTOCK FOR EXPORT--APPLICATION--PLACE--PAYMENT FOR DELAY.--A person or his agent having in his charge livestock destined for transportation or to be driven beyond the limits of the district or out of this state shall make application to the proper inspector to inspect the livestock, stating in the application the time the livestock will be ready for inspection. An inspector shall inspect the livestock at a location to be designated by the board, make the record and give the certificate required by law to the owner of the livestock; provided that in the case of livestock transported out of this state, the place of inspection shall be at some stockyards or other convenient place near the proposed point of shipment of the livestock from the state. If the owner or person in charge of the livestock causes any unreasonable delay or loss of time to an inspector, the owner or person in charge of the livestock shall pay the expenses and salary of the inspector during the delay or loss of time."

Chapter 282 Section 59

Section 59. Section 77-9-33 NMSA 1978 (being Laws 1891, Chapter 34, Section 7, as amended) is amended to read:

"77-9-33. INSPECTION OF EXPORTED LIVESTOCK--REPORT--INSPECTION OF SLAUGHTERHOUSES--PENALTY.--

A. Every inspector shall be an inspector of brands and ear marks and also an inspector of hides and slaughterhouses, and it is the duty of the inspectors to inspect the brands and ear marks of all livestock transported or driven from a district or out of this state and to make a sworn report to the director of the result of such inspection at least once every thirty days and more often if, in the opinion of the board, it is necessary. Every slaughterhouse in this state shall be carefully inspected by the inspectors, and all hides found in slaughterhouses shall be carefully compared with the records of the slaughterhouses and a report in writing setting forth the number of livestock killed at the slaughterhouse since the last inspection, the names of the persons for whom each of the livestock were slaughtered, the brands and marks upon each hide and any information that may be obtained touching the violation by the owner of any slaughterhouse, or any other person, of any of the provisions of Sections 77-17-9 through 77-17-11 NMSA 1978. For the purpose of making an inspection, an inspector has the right to enter in the day or night any slaughterhouse or other place where livestock are killed in this state and to carefully examine the premises and all books and records required by law to be kept on the premises and to compare the hides found with the records. A person who hinders or obstructs or attempts to hinder or obstruct an inspector in the performance of any of the duties required of him by law is guilty of a

misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

B. Livestock inspectors may arrest persons found in the act or whom they have good reason to believe to be guilty of driving, holding or slaughtering stolen livestock or of violating the inspection laws of the state. Livestock inspectors may carry arms and make arrests in any county in the state."

Chapter 282 Section 60

Section 60. Section 77-9-38 NMSA 1978 (being Laws 1899, Chapter 53, Section 2, as amended) is amended to read:

"77-9-38. INSPECTION FEES--LIEN--RECORD.--There shall be a fee for the inspection of livestock to be fixed by the board not to exceed the amount prescribed by law for each inspection request, and the fee shall be a lien upon the livestock of the owner until paid. Each inspector shall keep a complete record of all livestock inspected by him, listing all brands and marks and the names of the shippers, and a copy of the record shall be preserved by the board."

Chapter 282 Section 61

Section 61. Section 77-9-40 NMSA 1978 (being Laws 1895, Chapter 6, Section 16, as amended) is amended to read:

"77-9-40. EXPORTING OF LIVESTOCK WITHOUT BRAND OF SHIPPER OR BILL OF SALE--INSPECTION--DEFINITION OF ESTRAYS.--

A. For the purposes of this section, an estray is any livestock being driven or shipped from a district or from this state that is not properly identified as required by The Livestock Code; or not accompanied by a duly executed authority in writing by the owner of the recorded brand on the livestock authorizing the driving and handling of the livestock by the person in possession of the livestock.

B. If an inspector finds in or with the livestock he is inspecting an estray, he may seize and sequestrate the estray and hold and dispose of it in the manner provided by law for the disposition of unclaimed livestock by inspectors."

Chapter 282 Section 62

Section 62. Section 77-9-42 NMSA 1978 (being Laws 1969, Chapter 174, Section 4, as amended) is amended to read:

"77-9-42. TRANSPORTATION PERMITS FOR HORSES, MULES AND ASSES--BRAND AND HEALTH CERTIFICATE GOOD FOR LENGTH OF TIME OF OWNERSHIP.--

A. A person who owns horses, mules or asses and desires to transport them within the state for a purpose other than their sale or trade may, upon request to an inspector, be issued an owner's transportation permit in lieu of the required brand certificate for each horse, mule or ass to be transported.

B. The owner's transportation permit issued in lieu of a brand certificate is valid as long as the horse, mule or ass described in the certificate remains under the ownership of the person to whom the permit was issued.

C. The owner's transportation permit or the brand certificate shall accompany the animal for which it was issued at all times while the animal is in transit, and each shall identify the horse, mule or ass by brand, color, markings, sex, age and, where applicable, by registration number, tattoo or other mark as provided by rules of the board.

D. There shall be a fee in an amount set by the board for each owner's transportation permit."

Chapter 282 Section 63

Section 63. Section 77-9-43 NMSA 1978 (being Laws 1929, Chapter 87, Section 2) is amended to read:

"77-9-43. NOTICE OF TRANSPORT--INSPECTION DATE AND PLACE.--Before a person transports any livestock or carcasses from a district or out of state, the person shall notify the nearest inspector that it is desired that the livestock or carcasses be inspected, fixing the date, place and time of the inspection. The person requesting the inspection shall give a reasonable time prior to the proposed shipment date."

Chapter 282 Section 64

Section 64. Section 77-9-54 NMSA 1978 (being Laws 1901, Chapter 45, Section 3, as amended) is amended to read:

"77-9-54. TRANSPORTATION OF HIDES.--

A. It is unlawful for any person to transport or cause to be transported from a district or out of this state any hides that have not been inspected by an inspector and tagged or marked as prescribed by rule of the board. The board may provide by rule for collection of an inspection fee not to exceed the amount prescribed by law, and the fee is a lien upon the hides inspected until paid.

B. Each inspector shall keep a complete record of all inspections made by him and immediately forward to the director on blanks furnished him for that purpose, a complete report of each inspection, giving the names of the purchaser and shipper of the hides and all the brands on the hides. The report shall be preserved by the director as records of his office."

Chapter 282 Section 65

Section 65. Section 77-9-56 NMSA 1978 (being Laws 1921, Chapter 26, Section 1) is amended to read:

"77-9-56. HIDE PURCHASES--BILL OF SALE--CONTENTS--PENALTY.--A person in this state who purchases a hide from livestock is required to secure from the person from whom the hide is purchased, at the time of purchase, a bill of sale showing the brands and the marks, if any, on the hide. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense."

Chapter 282 Section 66

Section 66. Section 77-9-58 NMSA 1978 (being Laws 1961, Chapter 3, Section 1, as amended) is recompiled as Section 77-9A-1 NMSA 1978 and is amended to read:

"77-9A-1. INTERSTATE CATTLE OR SHEEP TRANSPORTATION--CATTLE OR SHEEP REST STATIONS.--It is unlawful for any person to unload cattle or sheep in interstate transit by truck for feed, rest and water except at cattle or sheep rest stations licensed by the board except in emergency situations. In emergency situations, cattle or sheep in transit shall be inspected by an inspector before being reloaded."

Chapter 282 Section 67

Section 67. Section 77-9-59 NMSA 1978 (being Laws 1961, Chapter 3, Section 2, as amended) is recompiled as Section 77-9A-2 NMSA 1978 and is amended to read:

"77-9A-2. CATTLE OR SHEEP REST STATIONS--LICENSING.--The board shall license all cattle and sheep rest stations, which shall meet minimum rules of the board, and shall collect a license fee set by the board for each station licensed. No applicant shall be licensed until he has posted a bond in a form and amount approved by the board covering the faithful compliance by the licensee with all laws and rules of the board pertaining to cattle or sheep rest stations."

Chapter 282 Section 68

Section 68. Section 77-9-60 NMSA 1978 (being Laws 1961, Chapter 3, Section 3, as amended) is recompiled as Section 77-9A-3 NMSA 1978 and is amended to read:

"77-9A-3. REST STATIONS--RULES.--The board may prescribe rules covering the operation of rest stations for cattle or sheep in transit by truck."

Chapter 282 Section 69

Section 69. Section 77-9-61 NMSA 1978 (being Laws 1961, Chapter 3, Section 4) is recompiled as Section 77-9A-4 NMSA 1978 and is amended to read:

"77-9A-4. VIOLATIONS--PENALTY.--A person who violates any of the provisions of Chapter 77, Article 9A NMSA 1978 or any rule of the board pertaining to rest stations is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 70

Section 70. Section 77-9-63 NMSA (being Laws 1969, Chapter 124, Section 2, as amended) is recompiled as Section 77-9A-5 NMSA 1978 and is amended to read:

"77-9A-5. UNLOADING LIVESTOCK FOR FEED, REST AND WATER--DUMPING CARCASSES--PENALTY.--

A. All livestock that has been confined to a truck for a continuous period of twenty-four hours without feed, rest and water shall be unloaded at the nearest licensed cattle or sheep rest station or other facility providing feed and water for livestock. The livestock shall receive adequate feed and water and a minimum of five hours rest before reloading.

B. A livestock inspector or other peace officer may require a person moving livestock within the state by truck to unload the livestock for feed, rest and water when the logbook of the operator indicates the livestock has been confined for twenty-four hours. If a livestock inspector determines a truck moving livestock to be unsafe or overloaded or if the conditions for the livestock are determined to be unsafe, the livestock inspector shall have the authority to remedy the situation.

C. All expenses incurred in compliance with this section are the responsibility of the livestock owner or his agent.

D. A person shall not dispose of carcasses along the public streets, roads or highways of this state. A person who violates the provisions of this subsection is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 71

Section 71. Section 77-10-1 NMSA 1978 (being Laws 1937, Chapter 59, Section 1, as amended) is amended to read:

"77-10-1. DEFINITIONS.--As used in Chapter 77, Article 10 NMSA 1978:

A. "livestock auction market" means a place, establishment or facility conducted or operated for compensation or profit as a public livestock market consisting of pens or

other enclosures, barns, stables, sheds and their appurtenances, including saddle and work stock, and vehicles used in connection therewith or in the operation thereof where livestock not owned by the operator for at least three months next preceding the receipt thereof is received, held or kept for any purpose other than:

(1) immediate shipment or immediate slaughter;

(2) grazing, feeding or breeding; or

(3) for the sale and exchange of breeding stock by a bona fide livestock association; and

B. "operator" means a person in control of the management or operation of a livestock auction market."

Chapter 282 Section 72

Section 72. Section 77-10-2 NMSA 1978 (being Laws 1937, Chapter 59, Section 2, as amended) is amended to read:

"77-10-2. NECESSITY OF LICENSE--APPLICATION--FEE--BOND--CANCELLATION OF LICENSE--COPIES.--

A. It is unlawful for a person to operate a livestock auction market in this state unless he is the holder of an unexpired, uncanceled license issued by the board.

B. An application to operate a livestock auction market shall set forth:

(1) the name and address of the applicant;

(2) the location of the livestock auction market for which application is made; and

(3) a description of the facilities afforded by the livestock auction market.

C. The application shall be accompanied by

the payment of a license fee set by the board not to exceed the amount prescribed by law.

D. The applicant shall file with the packers and stockyards division of the United States department of agriculture a bond in the penal sum as prescribed by the packers and stockyards division and approved by the board and conditioned that the principal shall comply with the terms of the surety and with all of the terms and conditions of Chapter 77, Article 10 NMSA 1978, with some surety company authorized to do business in this state.

E. If the applicant satisfies the conditions of application, the board shall issue a license good for one year to operate the livestock auction market at the location specified in the application.

F. A license issued in accordance with this section may be canceled by the board for violation of Chapter 77, Article 10 NMSA 1978 by the licensee, and the board may refuse to issue a license to a person whose previous license has been canceled or to any firm, association or corporation of which he is a member or by which he is employed.

G. It is unlawful for an operator to employ a person whose license was canceled by the board or to operate a livestock auction market in which that person has direct or indirect interest.

H. The bond required by this section shall be for the benefit of a person damaged by a breach of the condition of the bond, and the person damaged shall be entitled to bring an action on the bond in his own name. The board shall furnish a certified copy of the bond to a person who applies for a copy on payment of the fee set by the board for copy services."

Chapter 282 Section 73

Section 73. Section 77-10-3 NMSA 1978 (being Laws 1937, Chapter 59, Section 3) is amended to read:

"77-10-3. DUTIES OF LICENSEES.--The operator shall:

A. keep posted and on display in a conspicuous place at the livestock auction market an unexpired, uncanceled license issued by the board as provided in Section 77-10-2 NMSA 1978;

B. keep the livestock auction market clean and sanitary and, whenever required by the board or a veterinarian authorized by the board, shall disinfect the livestock auction market or any part thereof and shall procure to be administered preventive or curative treatment of livestock in the possession of the operator, all under the supervision and direction of the board or its authorized veterinarian and without expense to the board;

C. allow the board and its members and officials and its inspectors and authorized veterinarians to have convenient access to the livestock auction market and its books and records or any livestock that may be in his possession at all reasonable times for the purpose of inspection;

D. post in a conspicuous place at the livestock auction market a schedule of all charges for services, accommodations and facilities that he holds himself out as ready, able and willing to furnish at the livestock auction market to owners of livestock and shall file a

true copy of the schedule with the board. The schedule shall be the sole basis for all charges until a different schedule has been posted and filed;

E. immediately after the sale of any livestock at the livestock auction market, account and pay to the owner of the livestock the entire proceeds of the sale less his applicable scheduled charges;

F. make promptly after each sale and keep for a period of three years a complete record of the sale that contains a description of the livestock sold, the name of the owner and of the purchaser, the date of sale, the sale price and the amount and items of the operator's charges and open all such records to examination by the board or its inspector at any time on request;

G. be responsible for the wrongful acts or omissions of his agents and employees; and

H. comply with and conform to all lawful rules of the board and shall cooperate with the board in preventing the spread of diseases through the operation of the livestock auction market and in the suppression of livestock theft."

Chapter 282 Section 74

Section 74. Section 77-10-4 NMSA 1978 (being Laws 1937, Chapter 59, Section 4, as amended) is amended to read:

"77-10-4. NOTICE TO BOARD OF RECEIPT OF LIVESTOCK--CONTENTS--FEES.--Immediately on receipt of any livestock at the livestock auction market, the operator shall give written notice to the board in such form as the board may prescribe, stating the kind and number and description of the livestock received. At the same time, the operator shall collect and remit to the board or agent for the board the inspection fees prescribed by law for each head of livestock received. All money paid to the board shall be deposited to the proper board fund."

Chapter 282 Section 75

Section 75. Section 77-10-5 NMSA 1978 (being Laws 1937, Chapter 59, Section 5, as amended) is amended to read:

"77-10-5. LIVESTOCK INSPECTED BY BOARD INSPECTOR.--All livestock received at a livestock auction market shall be inspected by an inspector as soon as practicable. The inspector shall satisfy himself as to the ownership of the livestock and the purpose for which it has been received. Before the removal of the livestock, it shall be again inspected as to ownership by an inspector, and the inspector shall conduct an inspection of the records documenting the receipt, sale or purchase of the livestock and may conduct a visual inspection of the livestock prior to issuing a certificate of inspection. The inspector shall issue his certificate of inspection and deliver one copy to

the purchaser or his agent, one copy to the inspector at designation and forward the original to the board for filing."

Chapter 282 Section 76

Section 76. Section 77-10-9 NMSA 1978 (being Laws 1937, Chapter 59, Section 8 1/2, as amended) is amended to read:

"77-10-9. LIVESTOCK--OWNERS BOUND BY RULES.--Whenever an owner of livestock avails himself of the provisions of Chapter 77, Article 10 NMSA 1978, he is bound by the rules of the board as to health and ownership."

Chapter 282 Section 77

Section 77. Section 77-10-10 NMSA 1978 (being Laws 1937, Chapter 59, Section 9) is amended to read:

"77-10-10. VIOLATIONS--PENALTY.--A person who violates Chapter 77, Article 10 NMSA 1978 or any rule of the board made pursuant to that article is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978, and each day's violation constitutes a separate offense."

Chapter 282 Section 78

Section 78. Section 77-12-6 NMSA 1978 (being Laws 1923, Chapter 68, Section 6) is amended to read:

"77-12-6. DISTRAINT OF LIVESTOCK FOR DAMAGES.--A person damaged by trespassing livestock may hold and distrain the trespassing livestock until the damages that he has suffered and the costs, including a reasonable amount set by the board per head per day for feeding and caring for the livestock during the time the livestock is so distrained, are paid or legally tendered. The person distraining the livestock shall give notice to the owner, if known or ascertainable, within forty-eight hours after distraint."

Chapter 282 Section 79

Section 79. Section 77-12-10 NMSA 1978 (being Laws 1923, Chapter 68, Section 10) is amended to read:

"77-12-10. FAILURE TO CLOSE GATE--PENALTY.--A person who opens and fails to close a gate provided for in Section 77-12-9 NMSA 1978 is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 80

Section 80. Section 77-12-11 NMSA 1978 (being Laws 1923, Chapter 68, Section 11) is amended to read:

"77-12-11. LIVESTOCK AT LARGE ON HERD LAW DISTRICT ROAD--PENALTY.--An owner or holder of livestock described in Section 77-12-6 NMSA 1978 who permits livestock to run at large on a public road within a herd law district is guilty of a misdemeanor and on conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 81

Section 81. Section 77-13-2 NMSA 1978 (being Laws 1907, Chapter 80, Section 2, as amended) is amended to read:

"77-13-2. IMPOUNDMENT OF ESTRAY ANIMALS.--

A. A person shall not impound an estray except when the estray is found on property the person owns or controls. When a person impounds an estray, he shall, within five days of the impoundment, notify the director or an inspector of the impoundment.

B. A person having knowledge of an estray upon any public or private range, fenced or unfenced, may notify the director or an inspector, giving description of the estray, and upon instructions from the board or inspector the estray shall be turned over to an inspector for disposition as the board may direct according to law.

C. It is lawful for a person having knowledge of an estray grazing on public land, public highways or other lands used for grazing purposes in conjunction with public land and who has the prior approval of or is acting in cooperation with an agent of the board to impound and detain the estray for the purpose of ascertaining ownership by brand or other means of identification. The owner of the estray found to be in trespass shall be allowed forty-eight hours from receipt of notice of impoundment within which to claim the animal and make settlement for trespass damage. If the owner fails to claim the animal and effect a settlement for trespass damages within the time allowed, the estray detained shall be turned over to an inspector or other agent of the board for disposition in the same manner as provided for other estrays under Chapter 77, Article 13 NMSA 1978."

Chapter 282 Section 82

Section 82. Section 77-13-3 NMSA 1978 (being Laws 1907, Chapter 80, Section 3, as amended) is amended to read:

"77-13-3. EXAMINATION OF BRAND RECORDS--NOTICE TO OWNER--CHARGE FOR CARE--LIMITATION.--Upon receiving notice of the impoundment of an estray the

director shall make or cause to be made an examination of the brand records. If from this record the name of the owner or probable owner can be determined, the director shall notify the owner of the impoundment of the estray and, upon the owner proving to the satisfaction of the board that the estray is lawfully his, the board shall issue to him an order to receive the estray upon payment of any reasonable charges that may have been incurred in the care of the estray impounded."

Chapter 282 Section 83

Section 83. Section 77-13-5 NMSA 1978 (being Laws 1907, Chapter 80, Section 5, as amended) is amended to read:

"77-13-5. SALE OF UNCLAIMED ESTRAYS--BILL OF SALE--EFFECT--SALE WITHOUT ADVERTISEMENT--CONDITIONS.--If an estray is not claimed within five days after the last publication of notice, it may be sold by the board through an inspector in such manner as the board may direct. The inspector making the sale shall give a bill of sale to the purchaser from the board, signed by himself as inspector. The bill of sale shall be legal evidence of the ownership of the livestock by the purchaser and shall be a legal title to the livestock. Where the director determines that it is impractical to publish notice, the estray may be sold immediately without notice. In such case, the board shall publish notice of the proceeds from the sale of the estray in the same manner and for the same length of time as provided for the notice of the sale and shall hold and distribute the proceeds from the sale in the same manner as if the sale were made after notice."

Chapter 282 Section 84

Section 84. Section 77-13-6 NMSA 1978 (being Laws 1907, Chapter 80, Section 6, as amended) is amended to read:

"77-13-6. DISPOSITION OF PROCEEDS--RECORD OF SALE--PAYMENTS TO OWNER.--The inspector making the sale of an estray shall return the proceeds of the sale to the board. The board shall pay the expenses incurred in the impounding, publishing of notice and selling of the animal and place the balance in the fund of the board, making a record of the same showing the marks and brands and other means of identification of the livestock and giving the amount realized from the sale. The record shall be open to the inspection of the public. Should the lawful owner of an estray that has been sold be found within two years after the sale of the livestock, the net amount received from the sale of the estray less the sum prescribed by law for office handling fees shall be paid to the owner upon his proving ownership to the satisfaction of the board."

Chapter 282 Section 85

Section 85. Section 77-13-8 NMSA 1978 (being Laws 1907, Chapter 80, Section 8, as amended) is amended to read:

"77-13-8. IMPOUNDING ESTRAY--FAILURE TO NOTIFY BOARD--PENALTY.--It is unlawful for a person other than an inspector to impound or retain possession of an estray except as provided in Sections 77-13-2 and 77-13-7 NMSA 1978. A person who impounds an estray contrary to the provisions of Chapter 77, Article 13 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense."

Chapter 282 Section 86

Section 86. Section 77-14-2 NMSA 1978 (being Laws 1977, Chapter 189, Section 1, as amended) is amended to read:

"77-14-2. DEFINITION.--As used in Chapter 77, Article 14 NMSA 1978, "proper military authority" means the commanding officer or other person in charge of a military reservation or enclave."

Chapter 282 Section 87

Section 87. Section 77-14-3 NMSA 1978 (being Laws 1901, Chapter 28, Section 1, as amended) is amended to read:

"77-14-3. TRESPASS ON LANDS.--

A. It is unlawful for a person or his agents or employees having charge of livestock to permit or allow the livestock to go upon the lands of others in this state for the purpose of grazing or watering upon any waters upon the lands without the permission of the owner or legal claimant or his agent. The provisions of this section shall not be construed to affect the obligation of a property owner to meet the requirements of Section 77-16-1 NMSA 1978 for fencing against such trespasses and shall apply not only to titled lands in this state but to any lands upon which a person may have a valid existing filing under the laws of the United States or any lands that may be leased by any person from the state.

B. A person or proper military authority who claims the benefits of the protection of this section shall carefully and conspicuously mark the line of his lands so that such mark may be easily seen by persons handling livestock and shall post a notice upon the land conspicuously, warning against trespassing or shall serve personal written notice giving description of the land by government surveys or by metes and bounds."

Chapter 282 Section 88

Section 88. Section 77-14-7 NMSA 1978 (being Laws 1909, Chapter 146, Section 4, as amended) is amended to read:

"77-14-7. LIVESTOCK RUNNING AT LARGE--WHEN UNLAWFUL--IMPOUNDING--SALE--SUIT FOR DAMAGES.--

A. After the publication and posting of an order pursuant to Section 77-14-6 NMSA 1978, it is unlawful for the owners of livestock to allow the livestock to run at large within the town, conservancy district, irrigation district or military reservation or enclave. An owner who willfully allows livestock to run at large in violation of the order is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

B. The sheriff or other peace officer or proper military authority shall impound livestock found running at large and sell the livestock at public auction to the highest bidder for cash after giving notice of the time and place of sale in some newspaper published in the county where the violation occurred three days prior to the day of sale; provided that in the case of a military reservation or enclave, the sale shall be conducted by the board pursuant to the procedure set forth in Section 77-14-36 NMSA 1978. The proceeds up to five dollars ($5.00) per day for each animal shall be retained by the impounding authority to cover its expense and fees. The balance, if any, shall be paid to the general fund.

C. The owner of livestock impounded may redeem the livestock at any time prior to sale by paying the impound fees and costs incurred for each day or portion of a day that the livestock has been in custody; provided that in the case of a military reservation or enclave, redemption shall be allowed pursuant to Section 77-14-36 NMSA 1978.

D. A person claiming damages for violation of the order may file suit to recover damages as in other civil cases; provided that such damages, in the case of a violation involving a military reservation or enclave, shall include direct, indirect, incidental and consequential damages."

Chapter 282 Section 89

Section 89. Section 77-14-8 NMSA 1978 (being Laws 1919, Chapter 88, Section 1, as amended) is amended to read:

"77-14-8. IRRIGATION DISTRICTS--IMPOUNDING TRESPASSING ANIMALS.--Whenever a majority of the resident landowners who are qualified voters in any political subdivision of an irrigation section petitions the board of county commissioners in which the political subdivision is located for an order permitting trespassing livestock to be restrained and held for damages under the terms set forth in Sections 77-14-8 through 77-14-24 NMSA 1978, the board of county commissioners, at its first regular session after the filing of the petition with the county clerk, shall grant the request in the petition and cause an order to that effect to be duly entered. Sections 77-14-8 through 77-14-24 NMSA 1978 also apply to such animals as are kept, fed, pastured and maintained outside of the political subdivision and include livestock running on the range outside of or kept, fed, pastured and maintained outside of the political subdivision."

Chapter 282 Section 90

Section 90. Section 77-14-11 NMSA 1978 (being Laws 1919, Chapter 88, Section 4) is amended to read:

"77-14-11. RIGHT TO IMPOUND--FENCES.--After the order has taken effect, a person within the political subdivision finding any livestock trespassing upon his premises has the right to take up, hold and restrain the livestock for such damages as it may have inflicted or he may deliver the livestock to the nearest magistrate to be held and impounded under the conditions set forth in Sections 77-14-8 through 77-14-24 NMSA 1978; provided, however, that no person has the right under those sections to hold and restrain livestock for damages when at the time of the trespass, the person did not have surrounding his premises a fence equivalent to that described in Chapter 77, Article 16 NMSA 1978. A fence greater or equivalent to such fence in strength and resisting power, constructed of other material, shall be considered sufficient for the purposes of Sections 77-14-8 through 77-14-24 NMSA 1978."

Chapter 282 Section 91

Section 91. Section 77-14-20 NMSA 1978 (being Laws 1919, Chapter 88, Section 14) is amended to read:

"77-14-20. FEES--APPOINTMENT OF POUNDKEEPER.--

A. The magistrate shall receive as fees for entering orders and issuing papers and performing other duties relating to Sections 77-14-8 through 77-14-24 NMSA 1978 the same as are provided by law in civil cases for similar services, and all persons serving papers pursuant to those sections shall be allowed the same fees as are allowed in civil cases for similar services. Arbitrators selected under the terms of those sections shall be allowed a reasonable fee for their services.

B. The magistrate shall set a reasonable charge per day for caring for the livestock. He shall feed and care for them while held by him. The magistrate may appoint some other person to act as poundkeeper. The poundkeeper shall hold the livestock subject to the orders of the magistrate and shall receive the same fees and costs as are provided in this section for the magistrate in caring for and feeding the livestock."

Chapter 282 Section 92

Section 92. Section 77-14-22 NMSA 1978 (being Laws 1919, Chapter 88, Section 16) is amended to read:

"77-14-22. SALE OF LIVESTOCK--SURPLUS FUNDS--COSTS AND EXPENSES.--The magistrate, after paying all costs, fees and claims from the proceeds of a sale that is made under his direction as provided in Sections 77-14-8 through 77-14-24 NMSA 1978, shall pay the remainder to the owner of the livestock. If the owner is unknown, the magistrate shall deposit the proceeds of the sale, after paying all costs and claims, with the board, which shall handle the proceeds in accordance with the provisions of Chapter

77, Article 13 NMSA 1978. Provided, however, that in case the sale is made under execution, as provided in Section 77-14-18 NMSA 1978, the magistrate shall file with the officer making the sale a certified statement of all costs and expenses that may have accrued, which shall be paid by the officer selling the livestock under execution as other costs are paid."

Chapter 282 Section 93

Section 93. Section 77-14-35 NMSA 1978 (being Laws 1901, Chapter 54, Section 1, as amended) is amended to read:

"77-14-35. LIVESTOCK NOT TO RUN AT LARGE IN MUNICIPALITIES--TRESPASS--DAMAGES--PENALTY.--Livestock shall not be permitted to run at large within the limits of any city, town or village, incorporated or unincorporated, or to trespass upon the cultivated fields and gardens of any person. The owner of any livestock allowing the livestock to run at large within the limits of any city, town or village, incorporated or unincorporated, or to trespass upon the property of another is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 and may be liable for treble the damage occasioned by such trespass. No owners of any property trespassed upon as mentioned in this section shall be liable for the injury, death or loss of any livestock resulting during expulsion from or impounding upon his property of the livestock actually trespassing."

Chapter 282 Section 94

Section 94. Section 77-17-1 NMSA 1978 (being Laws 1939, Chapter 115, Section 1, as amended) is amended to read:

"77-17-1. LICENSE AND BOND REQUIRED.--A person shall not conduct or carry on the trade of butcher or slaughterer of livestock or as a dealer in fresh meats or meat products or as a manufacturer or processor of meat or poultry products or operate a rendering plant or operate a cold storage locker plant in which cold storage lockers are rented or leased to other persons in this state without having first obtained a license and filed a bond as required by Sections 77-17-2 and 77-17-3 NMSA 1978."

Chapter 282 Section 95

Section 95. Section 77-17-2 NMSA 1978 (being Laws 1939, Chapter 115, Section 2, as amended) is amended to read:

"77-17-2. LICENSES--BUTCHER OR SLAUGHTERER--DEALER IN FRESH MEAT OR LIVESTOCK OR POULTRY MEAT PRODUCTS OR MEAT FROM OTHER BIRDS AND ANIMALS USED FOR HUMAN CONSUMPTION--COLD STORAGE LOCKER--RENDERING PLANT.--

A. A person carrying on or desiring to carry on the business of butcher or slaughterer of livestock used for human consumption shall procure a license from the board prior to carrying on the business and shall pay a yearly license fee of twenty-five dollars ($25.00).

B. In addition, such person may be charged reasonable fees for meat inspection service over and above the inspector's normal working assignment under the rules of the board pertaining to meat inspection.

C. Application for licensure shall be made upon a form prescribed by the board and shall be accompanied by the amount of the license fee provided in this section. The license fees shall not be prorated on account of the applicant doing business for less than a full calendar year, and license renewal fee in these same amounts shall be paid for each calendar year in which any person engages in the business and be paid at the time prescribed by rules of the board.

D. A person carrying on or desiring to carry on the business of selling or dealing in the fresh meat or meat products of livestock used for human consumption or livestock or poultry meat products or manufacturing or processing of meat or poultry products or operating a rendering plant or operating a cold storage locker plant in which cold storage lockers are rented or leased to other persons shall obtain a license to engage in the business from the board after making application upon forms prescribed by the board and upon payment of an annual license fee in an amount set by the board not to exceed ten dollars ($10.00). Annual renewal fees are payable at times prescribed by rule of the board. No bond or bond filing fee is required for any person licensed pursuant to this subsection.

E. Licenses provided for in this section shall not be issued to a person who is not meeting the requirements for facilities and product handling provided for in the federal and state meat inspection acts and United States department of agriculture food safety inspection service and board rules. For good cause shown, the board may, after notice to the holder of a license provided for in this section and after a reasonable hearing, revoke a license."

Chapter 282 Section 96

Section 96. Section 77-17-5 NMSA 1978 (being Laws 1939, Chapter 115, Section 4, as amended) is amended to read:

"77-17-5. DISPOSITION OF LICENSE FEES.--The proceeds from the license fees shall be paid into the board's interim receipts and disbursement fund for credit to the meat inspection division and shall be expended by the board for the same purposes and in a like manner as other money in the board's meat inspection division."

Chapter 282 Section 97

Section 97. Section 77-17-6 NMSA 1978 (being Laws 1939, Chapter 115, Section 5) is amended to read:

"77-17-6. PENALTY.--A person who violates any of the provisions of Sections 77-17-1 through 77-17-6 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 98

Section 98. Section 77-17-7 NMSA 1978 (being Laws 1965, Chapter 127, Section 1) is amended to read:

"77-17-7. DEFINITION.--As used in Sections 77-17-7 and 77-17-8 NMSA 1978, "slaughterhouse" means an abattoir or a place where livestock are slaughtered."

Chapter 282 Section 99

Section 99. Section 77-17-9 NMSA 1978 (being Laws 1884, Chapter 47, Section 20, as amended) is amended to read:

"77-17-9. FAILING TO KEEP RECORD--PENALTY.--A person who carries on the business of butcher or slaughterer of livestock shall keep a true and faithful record, in a book kept for the purpose, of all livestock purchased or slaughtered by him together with a description of each animal, including marks, brands, age and weight and from whom purchased and the date of purchase. The person shall keep the hide and ears of cattle, sheep and goats for thirty days or until inspected by an inspector after the livestock is slaughtered. A person who violates a provision of this section is guilty of a misdemeanor for each offense and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 100

Section 100. Section 77-17-10 NMSA 1978 (being Laws 1884, Chapter 47, Section 21, as amended) is amended to read:

"77-17-10. INSPECTION OF RECORD, HIDES AND EARS.--The record, hides and ears of cattle, sheep and goats shall be open to the inspection by the board for the period of thirty days or until inspected by an inspector, and any butcher or slaughterer who refuses to permit such inspection or examination is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Chapter 282 Section 101

Section 101. Section 77-17-12 NMSA 1978 (being Laws 1891, Chapter 45, Section 1, as amended) is amended to read:

"77-17-12. HIDES AND EARS TO BE KEPT--INSPECTION-- PENALTY.--A person killing or causing to be killed any livestock for his own use or for the use of others or for the purpose in whole or in part of sale or exchange is required to keep in his own possession, unchanged and unmutilated and in condition to be easily inspected and examined, all hides or pelts and ears of cattle, sheep and goats, for the period of thirty days after the killing or until inspected by an inspector and shall at any time while the hides or pelts and ears remain in his possession permit them to be inspected and examined by a sheriff, deputy sheriff, inspector or other officer authorized by law to inspect any hides and pelts or livestock, whether dead or alive. A person who violates the provisions of this section is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978."

Chapter 282 Section 102

Section 102. Section 77-18-2 NMSA 1978 (being Laws 1987, Chapter 151, Section 1) is amended to read:

"77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED LIVESTOCK.--

A. If a livestock inspector or other peace officer has reason to believe that livestock are being cruelly treated, he may apply to a magistrate court in the county where the livestock are located for a warrant to seize the allegedly cruelly treated livestock.

B. On a showing of probable cause to believe that the livestock are being cruelly treated, the magistrate court shall issue a warrant and set the matter for hearing as expeditiously as possible within thirty days unless good cause for a later time is demonstrated by the state. Seizure as authorized by this section shall be restricted to only those livestock allegedly being cruelly treated. The board by rule shall establish procedures for preserving evidence of alleged cruel treatment of livestock.

C. The magistrate executing the warrant shall notify the board, have the livestock impounded and give written notice to the owner of the livestock of the time and place of the magistrate court hearing.

D. After all interested parties have been given an opportunity to present evidence at the hearing and if the court finds that the owner has cruelly treated the livestock, the court shall order the sale of the livestock at fair market value or order humane destruction. If the livestock is ordered sold, the sale shall occur within ten days of the order. If the court does not find that the owner has so cruelly treated the livestock, the court shall order the livestock returned to the owner.

E. If the magistrate court orders the sale of the livestock, the board shall take proper action to ensure the livestock is sold at fair market value, including acceptance of

reasonable bids or sale at auction. A bid by the owner of the livestock or his representative shall not be accepted.

F. Proceeds from the sale of the livestock shall be forwarded to the magistrate ordering the sale. From these proceeds, the magistrate shall pay all expenses incurred in caring for the livestock while it was impounded and any expenses involved in its sale. Any excess proceeds of the sale shall be forwarded to the former owner. If the expenses incurred in caring for and selling the livestock are more than the amount received from the sale, the magistrate court shall order the former owner to pay the additional cost."

Chapter 282 Section 103

Section 103. RECOMPILATION.--Sections 77-9-7, 77-9-18 and 77-9-19 NMSA 1978 (being Laws 1895, Chapter 6, Section 3 and Laws 1912, Chapter 55, Section 5 and 6, as amended) are recompiled in Chapter 77, Article 2 NMSA 1978.

Chapter 282 Section 104

Section 104. REPEAL.--Sections 77-2-11, 77-2-20, 77-3-6, 77-3-7, 77-3-19, 77-4-2, 77-4-3, 77-4-6, 77-4-7, 77-6-1 through 77-6-10, 77-8-8, 77-8-9, 77-8-11, 77-8-21, 77-9-1, 77-9-6, 77-9-12, 77-9-17, 77-9-25, 77-9-36, 77-9-37, 77-9-39, 77-9-47, 77-9-48, 77-9-52, 77-9-62, 77-14-1, 77-14-25 through 77-14-34, 77-14-37 through 77-14-39, 77-17-11, 77-17-13, 77-17-15 and 77-17-16 NMSA 1978 (being Laws 1889, Chapter 106, Sections 1 and 20, Laws 1917, Chapter 30, Sections 2 and 3, Laws 1889, Chapter 106, Section 16, Laws 1905, Chapter 31, Sections 2, 3, 6 and 7, Laws 1941, Chapter 150, Sections 1 through 10, Laws 1951, Chapter 188, Sections 17, 21 and 23, Laws 1963, Chapter 129, Section 7, Laws 1884, Chapter 47, Section 1, Laws 1975, Chapter 50, Section 2, Laws 1895, Chapter 6, Section 11, Laws 1912, Chapter 55, Section 3, Laws 1895, Chapter 6, Section 19, Laws 1891, Chapter 34, Section 13, Laws 1899, Chapter 53, Sections 1 and 3, Laws 1929, Chapter 87, Sections 6 and 7, Laws 1933, Chapter 43, Section 2, Laws 1969, Chapter 124, Section 1, Laws 1882, Chapter 42, Section 5, Laws 1927, Chapter 50, Sections 1 through 10, Laws 1921, Chapter 76, Sections 1 through 3, Laws 1884, Chapter 47, Section 22, Laws 1891, Chapter 45, Section 2 and Laws 1899, Chapter 44, Sections 1 and 2, as amended) are repealed.

Chapter 282 Section 105

Section 105. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE BILL 287, AS AMENDED

CHAPTER 283

RELATING TO LICENSING; MAKING CHANGES IN THE REAL ESTATE APPRAISERS ACT.

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

Chapter 283 Section 1

Section 1. Section 61-30-5 NMSA 1978 (being Laws 1990, Chapter 75, Section 5, as amended) 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.

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 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. 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."

Chapter 283 Section 2

Section 2. Section 61-30-7 NMSA 1978 (being Laws 1990, Chapter 75, Section 7, as amended) is amended to read:

"61-30-7. BOARD--POWERS--DUTIES.--The board shall:

A. adopt rules necessary to implement the provisions of the Real Estate Appraisers Act;

B. establish educational programs and research projects related to the appraisal of real estate;

C. establish the administrative procedures for processing applications and issuing registrations, licenses and certificates to persons who qualify to be registered, licensed and certified real estate appraisers;

D. receive, review and approve applications for state registered real estate appraisers, state licensed real estate appraisers and each category of state certified real estate appraisers and, for state licensed or certified real estate appraisers, prepare or supervise the preparation of examination questions and answers and supervise grading of examinations and enter into contracts with one or more educational testing services or organizations for such examinations;

E. define the extent and type of educational experience, appraisal experience and equivalent experience that will meet the requirements for registration, licensing and certification under the Real Estate Appraisers Act after considering generally recognized appraisal practices and set minimum requirements for education and experience;

F. provide for continuing education programs for the renewal of registrations, licenses and certification that will meet the requirements provided in the Real Estate Appraisers Act and set minimum requirements;

G. adopt standards to define the education programs that will meet the requirements of the Real Estate Appraisers Act and will encourage conducting programs at various locations throughout the state;

H. adopt standards for the development and communication of real estate appraisals provided in the Real Estate Appraisers Act and adopt rules explaining and interpreting the standards after considering generally recognized appraisal practices;

I. adopt a code of professional responsibility for state registered, licensed and certified real estate appraisers;

J. comply with annual reporting requirements and other requirements set forth in the federal real estate appraisal reform amendments;

K. maintain a registry of the names and addresses of the individuals who hold current registrations, licenses and certificates issued under the Real Estate Appraisers Act;

L. establish procedures for disciplinary action in accordance with the Uniform Licensing Act against any applicant or holder of a registration, license or certificate for violations of the Real Estate Appraisers Act and any rules adopted pursuant to provisions of that act; and

M. perform such other functions and duties as may be necessary to carry out the provisions of the Real Estate Appraisers Act."

Chapter 283 Section 3

Section 3. Section 61-30-10.1 NMSA 1978 (being Laws 1992, Chapter 54, Section 8, as amended) is amended to read:

"61-30-10.1. QUALIFICATION FOR REGISTRATION.--

A. Registration shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a registration shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for registration as a state registered real estate appraiser shall have:

(1) successfully completed seventy-five classroom hours of instruction in appraisal of real estate approved by the board; or

(2) additional experience and education requirements as established for the registered apprentice classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency."

Chapter 283 Section 4

Section 4. Section 61-30-11 NMSA 1978 (being Laws 1990, Chapter 75, Section 11, as amended) is amended to read:

"61-30-11. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a license shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a license as a state licensed real estate appraiser shall have:

(1) a minimum of two thousand hours of experience in real property appraisal;

(2) successfully completed seventy-five classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by rule; or

(3) such equivalent education in an activity closely related to or associated with real estate appraisal as determined by rule.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

E. Individuals who do not meet the qualifications for licensure are not qualified for appraisal assignments involving federally related transactions."

Chapter 283 Section 5

Section 5. Section 61-30-12 NMSA 1978 (being Laws 1990, Chapter 75, Section 12, as amended) is amended to read:

"61-30-12. QUALIFICATIONS FOR CERTIFICATE.--

A. Certificates shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a certificate shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a general certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and have:

(1) thirty months of experience in real property appraisal, with a minimum of two thousand hours of experience in real property appraisal of which at least fifty percent of the hours are in nonresidential appraisal work;

(2) successfully completed one hundred sixty-five classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by rule, which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser or the one hundred five classroom hour requirement for the state certified real estate appraiser with a residential certificate; and

(3) additional experience and education requirements as established for the general certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. Each applicant for a residential certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and shall have:

(1) two years of experience in real property appraisal, with a minimum of two thousand five hundred hours of experience in real property appraisal;

(2) successfully completed one hundred five classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation, which may include the ninety classroom hour requirement for the state licensed real estate appraiser; and

(3) additional experience and education requirements established for the residential certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

E. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency."

Chapter 283 Section 6

Section 6. Section 61-30-14 NMSA 1978 (being Laws 1990, Chapter 75, Section 14, as amended) is amended to read:

"61-30-14. ISSUANCE AND RENEWAL OF REGISTRATION, LICENSES AND CERTIFICATES.--

A. The board shall issue to each qualified applicant evidence of registration, a license or a certificate in a form and size prescribed by the board.

B. Every registration, license and certificate shall be renewed every three years on or before the thirtieth day of April. During the period from July 1, 1999, through April 30, 2002, the board in its discretion may renew licenses for periods of one, two or three years for the purpose of coordinating continuing education requirements with license renewal requirements.

C. Each registration, license or certificate holder shall submit proof of compliance with continuing education requirements and the annual renewal fee. At the election of eligible holders of a license or certificate who perform or seek to perform appraisals in federally related transactions under the federal real estate appraisal reform amendments, each application for renewal shall include payment of an annual registry fee set by the federal financial institutions examination council. The registry fee shall be transmitted by the board to the federal financial institutions examination council. Notice of whether the licensed or certified appraiser has paid the federal registry fee and is thus eligible to perform in federally related transactions shall be included on the face of each registration, license and certificate issued by the board.

D. The board shall certify renewal of each registration, license or certificate triennially, in the absence of any reason or condition that might warrant the refusal of the renewal of a registration, license or certificate.

E. In the event any registration, license or certificate holder fails to properly apply for renewal of the registration, license or certificate within the thirty days immediately following his registration, license or certificate renewal date of any given year, the registration, license or certificate shall expire thirty days following the renewal date.

F. The board may renew an expired registration upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount of one hundred dollars ($100), in addition to any other fee permitted under the Real Estate Appraisers Act.

G. The board may renew an expired license or certificate upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount of one hundred dollars ($100), in addition to any other fee permitted under the Real Estate Appraisers Act; provided that the board may, in the board's discretion, treat the former certificate holder as a new applicant and further may require reexamination as a condition to reissuance of a certificate.

H. If during a period of one year from the date a registration, license or certificate expires, the registration, license or certificate holder is either absent from this state on active duty military service or is suffering from an illness or injury of such severity that the person is physically or mentally incapable of renewal of the registration, license or certificate, payment of the reinstatement fee and, in the case of a license or certificate holder, reexamination shall not be required by the board if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the board for renewal. A copy of the person's military orders or a certificate of the applicant's physician shall accompany the application.

I. The board may adopt additional requirements by regulation for the issuance or renewal of registrations, licenses or certificates to maintain or upgrade appraiser qualifications at a level no less than the recommendations of the appraiser qualifications board of the appraisal foundation or the requirements of the appraisal subcommittee."

Chapter 283 Section 7

Section 7. Section 61-30-17 NMSA 1978 (being Laws 1990, Chapter 75, Section 17, as amended) is amended to read:

"61-30-17. FEES.--The board shall charge and collect the following fees not to exceed:

A. an application fee for a registration in the amount of one hundred dollars ($100);

B. an application fee for a license or residential certification in the amount of two hundred dollars ($200);

C. an application fee for general certification in the amount of two hundred fifty dollars ($250);

D. an examination fee for general and residential certification or license in the amount of one hundred dollars ($100);

E. a triennial registration renewal fee in the amount of one hundred fifty dollars ($150);

F. a triennial certificate renewal fee for residential certification or license renewal in the amount of three hundred dollars ($300);

G. a triennial certificate renewal fee for general certification in the amount of four hundred fifty dollars ($450);

H. the registry fee as required by the federal real estate appraisal reform amendments;

I. for registration for temporary practice, the amount of one hundred dollars ($100);

J. for each duplicate registration, license or certificate issued because a registration, license or certificate is lost or destroyed and an affidavit as to its loss or destruction is made and filed, a fee in the amount of twenty-five dollars ($25.00); and

K. fees to cover reasonable and necessary administrative expenses."

Chapter 283 Section 8

Section 8. TEMPORARY PROVISION.--As the terms of current members of the real estate appraisers board expire, the governor shall appoint or reappoint members in a way that provides for future terms to be staggered.

SENATE BILL 315, AS AMENDED

CHAPTER 284

RELATING TO LICENSURE; AMENDING THE THANATOPRACTICE ACT; PROVIDING PENALTIES.

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

Chapter 284 Section 1

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

"61-32-1. SHORT TITLE.--Chapter 61, Article 32 NMSA 1978 may be cited as the "Thanatopractice Act"."

Chapter 284 Section 2

Section 2. Section 61-32-3 NMSA 1978 (being Laws 1993, Chapter 204, Section 3, as amended) is amended to read:

"61-32-3. DEFINITIONS.--As used in the Thanatopractice Act:

A. "assistant funeral service practitioner" means a person licensed to engage in practice at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as an assistant funeral service practitioner as provided in that act;

B. "associate funeral service practitioner" means a person licensed to engage in practice at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as an associate funeral service practitioner as provided in that act;

C. "board" means the board of thanatopractice;

D. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;

E. "cremains" means cremated remains;

F. "cremation" means the reduction of a dead human body by direct flame to a residue, which includes bone fragments;

G. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;

H. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

I. "department" means the regulation and licensing department;

J. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Thanatopractice Act, as provided in that act;

K. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service,

whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

L. "direct supervision" means the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

M. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school, when the medical school assumes complete responsibility for the disposal of the body following medical study;

N. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner, a licensed associate funeral service practitioner or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

O. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or not;

P. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

Q. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments or a school of medicine;

R. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;

S. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

T. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act;

U. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act, as provided in that act;

V. "general supervision" means the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained, but is available for advice and assistance;

W. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

X. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Thanatopractice Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

Y. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

Z. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

AA. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

BB. "practice of funeral service" means those activities allowed under the Thanatopractice Act by a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern;

CC. "pulverization" means the process that reduces cremains to a granular substance; and

DD. "thanatopractice" means those immediate post-death activities related to the dead human body, its care and disposition, whether with or without rites or ceremonies, but not including disposition of the body by a school of medicine following medical study."

Chapter 284 Section 3

Section 3. Section 61-32-5 NMSA 1978 (being Laws 1993, Chapter 204, Section 5) is amended to read:

"61-32-5. BOARD CREATED.--

A. There is created the "board of thanatopractice".

B. The board is administratively attached to the department.

C. The board consists of six members. Three members shall be funeral service practitioners who have been licensed in this state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not ever have had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct disposer or health care practitioner who has been licensed in this state for at least five years.

D. Members of the board shall be appointed by the governor for terms of four years. Each member shall hold office until his successor is duly qualified and appointed. Vacancies shall be filled for any unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. A simple majority of the board members currently serving constitutes a quorum.

G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

H. No board member shall serve more than two full consecutive terms. The board shall recommend removal of any board member who has three unexcused absences from properly noticed meetings within a twelve-month period and may recommend removal of a board member for any other just cause.

I. The board shall elect a chairman and other officers as deemed necessary to administer its duties."

Chapter 284 Section 4

Section 4. Section 61-32-6 NMSA 1978 (being Laws 1993, Chapter 204, Section 6) is amended to read:

"61-32-6. BOARD POWERS.--

A. In addition to any other authority provided by law, the board has the power to:

(1) adopt, in accordance with the provisions of the Uniform Licensing Act, and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Thanatopractice Act;

(2) adopt rules implementing continuing education requirements;

(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to Section 61-1-3 NMSA 1978;

(4) establish reasonable fees to carry out the provisions of the Thanatopractice Act;

(5) provide for investigations necessary to determine violations of the Thanatopractice Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the Thanatopractice Act;

(7) apply for injunctive relief to enforce the provisions of the Thanatopractice Act or to restrain any violation of that act;

(8) impose a fine not to exceed five thousand dollars ($5,000) for each violation, in addition to other administrative or disciplinary costs, and all fines shall be deposited in the thanatopractice fund; and

(9) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Thanatopractice Act or for any neglect or default in the good faith performance or exercise of any such power or duty."

Chapter 284 Section 5

Section 5. Section 61-32-8 NMSA 1978 (being Laws 1993, Chapter 204, Section 8) is amended to read:

"61-32-8. INSPECTION--ACCESS--COUNSEL.--

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours. Acceptance of a license shall include permission for the board or its designee to enter the premises without legal process.

B. Each applicant for licensure pursuant to the Thanatopractice Act shall provide a physical address at which he shall maintain business records required by law and at which inspections of those records may occur.

C. The board shall be represented by the attorney general. The board may employ special counsel, upon approval of the attorney general, to review and prosecute cases of consumer complaints against any person, establishment or crematory licensed pursuant to the Thanatopractice Act. Payment for the services shall be by the board."

Chapter 284 Section 6

Section 6. Section 61-32-9 NMSA 1978 (being Laws 1993, Chapter 204, Section 9) is amended to read:

"61-32-9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER--ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL SERVICE PRACTITIONER.--

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period, the applicant shall have assisted in the embalming of at least fifty bodies and assisted in the directing of at least fifty funerals;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency;

(5) has graduated from an institution accredited by the American board of funeral service education or any other successor recognized by the United States office of education for funeral service education; and

(6) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of Paragraphs (5) and (6) of this subsection if the assistant funeral service practitioner has successfully completed examinations required by the board for practice as an associate funeral service practitioner and a funeral service practitioner.

B. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is not ambulatory and is issued for a specific funeral establishment only;

(4) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(5) has not been convicted of unprofessional conduct or incompetency.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(4) has not been convicted of unprofessional conduct or incompetency.

D. A license to practice as an assistant funeral service practitioner shall be issued to any person who, prior to June 18, 1993, held a valid license as an assistant funeral service practitioner and who was qualified to receive a renewal license on July 1, 1993.

E. A license to practice as an associate funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) has been licensed as an assistant funeral service practitioner;

(2) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(3) has not been convicted of unprofessional conduct or incompetency."

Chapter 284 Section 7

Section 7. Section 61-32-10 NMSA 1978 (being Laws 1993, Chapter 204, Section 10) is amended to read:

"61-32-10. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, provided the applicant possesses a valid license or its equivalent for the practice of funeral service issued by the appropriate examining board under the laws of

any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant has met educational requirements equal to or exceeding those established pursuant to the Thanatopractice Act or has actively practiced five out of the last ten years in another state, territory or foreign nation as a licensed funeral service practitioner or its equivalent."

Chapter 284 Section 8

Section 8. Section 61-32-11 NMSA 1978 (being Laws 1993, Chapter 204, Section 11) is amended to read:

"61-32-11. LICENSURE OF ESTABLISHMENTS--FUNERAL ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION ESTABLISHMENTS--CREMATORIES.--

A. Funeral establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall have a preparation room with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of direct disposition and shall maintain:

(a) a room equipped with a tile, cement or composition floor;

(b) necessary drainage and ventilation;

(c) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, for sheltering prior to disposition; and

(d) necessary supplies for safely handling unembalmed dead human bodies; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules.

D. Crematory licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, and shall have appropriate facilities and equipment devoted to cremation and pulverization; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Thanatopractice Act and board rules."

Chapter 284 Section 9

Section 9. Section 61-32-13 NMSA 1978 (being Laws 1993, Chapter 204, Section 13) is amended to read:

"61-32-13. ESTABLISHMENTS--REQUIREMENTS--TEMPORARY LICENSES.--

A. Each establishment shall have a full-time licensee in charge; provided the establishment license is a privilege granted to the person to whom it is issued and is not

transferable to other owners or operators or to another location than that designated on the license.

B. The board may adopt by rule special requirements for multi-unit establishments that are located within fifty miles of each other and that wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

D. The board may adopt by rule requirements for issuing a temporary establishment or crematory license that will be valid until the next scheduled board meeting."

Chapter 284 Section 10

Section 10. Section 61-32-14 NMSA 1978 (being Laws 1993, Chapter 204, Section 14) is amended to read:

"61-32-14. FUNERAL SERVICE INTERN--SCOPE OF PRACTICE--LIMITATIONS.--

A. A funeral service intern does not have the rights and duties of a funeral service practitioner and is only subordinate to the funeral service practitioner. The scope of what a funeral service intern is permitted to do depends on the activity and the experience of the funeral service intern, provided that a funeral service intern:

(1) may make arrangements only under the direct supervision of a licensed funeral service practitioner. After the completion of fifty arrangements under direct supervision, the funeral service intern may request approval from the board to make arrangements under the general supervision of a licensed funeral service practitioner;

(2) may embalm or otherwise prepare dead human bodies for disposition only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has assisted with the embalming of at least fifty bodies under direct supervision, the funeral service intern may request approval from the board to embalm under the general supervision of a licensed funeral service practitioner;

(3) may direct a funeral, committal service, graveside service or memorial service only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has directed at least fifty services under direct supervision, the funeral service intern may request approval from the board to direct such services under the general supervision of a licensed funeral service practitioner; and

(4) shall at no time act under the general supervision of a funeral service practitioner until he is notified in writing of board approval to so act.

B. A funeral service intern shall be employed by and receive training at only one establishment. The board may adopt rules that will allow training at more than one establishment under special circumstances.

C. Any funeral service intern's change of employment shall be reported to the board in writing within thirty days of the change. A change of employment that is not reported shall cause the period worked at the new establishment not to count as time served toward completion of the internship. It is the responsibility of the funeral service intern and the licensee in charge to report changes of employment.

D. A funeral service intern may be under the supervision of more than one funeral service practitioner at the establishment at which he is employed, provided that the board has received notice in writing prior to any changes in supervision. The board may adopt rules specifying the maximum number of persons that may be supervised by a funeral service practitioner.

E. Each funeral service intern shall report to the board quarterly, upon forms provided by the board, showing the work that has been completed during the preceding three months. All quarterly reports are due in the board office within thirty days of the close of the quarter. If a report is not received by the date due, the work completed during the reporting period shall not be counted when the board tabulates requirements for general supervision or for licensure as a funeral service practitioner.

F. Once a funeral service intern is under the general supervision of a funeral service practitioner, the funeral service intern need not submit to the board the quarterly reports required in this section."

Chapter 284 Section 11

Section 11. Section 61-32-17 NMSA 1978 (being Laws 1993, Chapter 204, Section 17, as amended) is amended to read:

"61-32-17. DIRECT DISPOSER--SCOPE OF PRACTICE-- LIMITATIONS.--

A. Except as otherwise provided in the Thanatopractice Act, a direct disposer may transport and dispose of a dead human body and participate in any rites or ceremonies after final disposition of the body.

B. Prior to interment, entombment or other final disposition of the body, a direct disposer shall not:

(1) participate in any rites or ceremonies in connection with the final disposition of the body;

(2) provide facilities for any such rites or ceremonies; and

(3) have the body embalmed unless embalming is required by the place of disposition."

Chapter 284 Section 12

Section 12. 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. Any adult may authorize his own cremation and the lawful disposition of his cremated remains by:

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

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

C. A personal representative acting pursuant to the 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 any person against any other person acting in accordance with that authorization.

F. If a decedent has left no written instructions regarding the disposition of his 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 his 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. 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.

H. 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.

I. 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."

Chapter 284 Section 13

Section 13. A new section of the Thanatopractice Act, Section 61-32-19.1 NMSA 1978, is enacted to read:

"61-32-19.1. CREMATORY--SCOPE OF PRACTICE--LIMITATIONS.--

A. The scope of practice of a crematory and its crematory authority is limited to cremation of dead human bodies and pulverization of cremains. A crematory and its crematory authority may:

(1) engage in transportation of dead human bodies to the crematory; and

(2) cremate dead human bodies and pulverize cremains.

B. After completion of the cremation process, if a crematory and its crematory authority have not been instructed to arrange for the interment, entombment or ennichement of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment or person that initiated the cremation services contract no later than thirty days after the date of cremation.

C. A crematory and its crematory authority shall maintain a system or process that ensures that any dead human body in the crematory's possession can be specifically identified throughout all phases of the cremation process.

D. A crematory shall keep an accurate record of all cremations performed for a period of not less than seven years.

E. The crematory and its crematory authority shall certify to the board that the crematory will not exceed the scope of practice allowed by law.

F. A licensed crematory shall not engage in any activity not specifically permitted in this section."

Chapter 284 Section 14

Section 14. Section 61-32-20 NMSA 1978 (being Laws 1993, Chapter 204, Section 20) is amended to read:

"61-32-20. EMBALMING.--

A. All dead human bodies not disposed of within twenty-four hours after death shall be embalmed in accordance with the Thanatopractice Act or stored under refrigeration as determined by board rule or regulation, unless otherwise required by regulation of the office of the medical investigator or the secretary of health or by orders of an authorized official of the office of the medical investigator, a court of competent jurisdiction or other authorized official.

B. No dead human body shall be embalmed except by a funeral service practitioner, an associate funeral service practitioner or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, no dead human body shall be embalmed without express authorization by the:

(1) surviving spouse or next of kin;

(2) legal agent or personal representative of the deceased; or

(3) person assuming responsibility for final disposition.

D. When embalming is not required and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner or associate funeral service practitioner who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The

embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

F. Except as provided in Subsection A of this section, embalming is not required."

Chapter 284 Section 15

Section 15. Section 61-32-21 NMSA 1978 (being Laws 1993, Chapter 204, Section 21) is amended to read:

"61-32-21. LICENSE RENEWAL.--

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A thirty-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be expired and invalid. A holder of an expired license shall be required to apply as a new applicant."

Chapter 284 Section 16

Section 16. Section 61-32-22 NMSA 1978 (being Laws 1993, Chapter 204, Section 22) is amended to read:

"61-32-22. INACTIVE STATUS.--

A. A funeral service practitioner, associate funeral service practitioner or direct disposer who has a current license may request that his license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule or regulation and compliance with the following requirements:

(1) certification by the practitioner that he has not engaged in the practice of funeral service in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated or continued against a licensee who has been granted inactive status.

E. No license shall be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated."

Chapter 284 Section 17

Section 17. Section 61-32-23 NMSA 1978 (being Laws 1993, Chapter 204, Section 23) is amended to read:

"61-32-23. FEES.--The board shall establish by regulation a schedule of reasonable fees for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees. All fees collected shall be deposited in accordance with Section 61-32-26 NMSA 1978."

Chapter 284 Section 18

Section 18. Section 61-32-24 NMSA 1978 (being Laws 1993, Chapter 204, Section 24, as amended) is amended to read:

"61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

A. The board, in accordance with the procedures set forth in the Uniform Licensing Act, may take disciplinary action against any licensee, temporary licensee or applicant. B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison, provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

(2) fraud or deceit in procuring or attempting to procure a license;

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;

(d) solicitation or acceptance by a licensee of any commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any cemetery, mausoleum or crematory;

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

(f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;

(5) violation of any of the provisions of the Thanatopractice Act or any rule or regulation of the board;

(6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan Regulatory Law or any regulations ordered by the superintendent of insurance;

(7) willful or negligent practice beyond the scope of the license issued by the board;

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, when the authorized cost has been paid;

(9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;

(10) knowingly making any false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspectors, agents or an attorney for the board in the performance of official duties;

(12) has had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel;

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public;

(15) employing fraudulent billing practices; or

(16) practicing funeral service, direct disposition or cremation without a current license.

C. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a person who is licensed as or is an applicant for a license as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern is guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting an associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern to exceed the limitations set forth in the provisions of the Thanatopractice Act or the regulations of the board.

D. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a direct disposer licensee or applicant or a direct disposition establishment licensee or applicant is guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

(2) causing a body to be embalmed when embalming is not required by a place of disposition;

(3) prior to interment, entombment or other final disposition of a dead human body, participating in any rites or ceremonies in connection with such final disposition of the body, or providing facilities for any such rites or ceremonies;

(4) reclaiming, transporting or causing to be transported a dead human body after written release for disposition; or

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

E. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

(1) engaging or holding oneself out as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or

(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

F. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

(1) court reporters;

(2) transcripts;

(3) certification or notarization;

(4) photocopies;

(5) witness attendance and mileage fees;

(6) postage for mailings required by law;

(7) expert witnesses; and

(8) depositions.

G. All fees, fines and costs imposed on an applicant, licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued."

Chapter 284 Section 19

Section 19. Section 61-32-26 NMSA 1978 (being Laws 1993, Chapter 204, Section 26) is amended to read:

"61-32-26. FUND ESTABLISHED.--

A. There is created in the state treasury the "thanatopractice fund".

B. All money received or collected by the board or the department pursuant to provisions of the Thanatopractice Act shall be deposited with the state treasurer for credit to the thanatopractice fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

C. Money in the thanatopractice fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Thanatopractice Act."

Chapter 284 Section 20

Section 20. Section 61-32-28 NMSA 1978 (being Laws 1993, Chapter 204, Section 28) is amended to read:

"61-32-28. COMMUNICATIONS--CONFIDENTIALITY.--All written and oral communications made to the board relating to potential disciplinary action shall be subject to the Inspection of Public Records Act."

Chapter 284 Section 21

Section 21. Section 61-32-30 NMSA 1978 (being Laws 1993, Chapter 204, Section 30) is amended to read:

"61-32-30. CRIMINAL PENALTIES.--Any person who commits any of the following acts is guilty of a misdemeanor and upon conviction 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 of less than one year or both:

A. violation of any provision of the Thanatopractice Act;

B. rendering or offering to render funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Thanatopractice Act; or

C. advertising or using any designation, diploma or certificate tending to imply that the person is a practitioner of funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Thanatopractice Act."

Chapter 284 Section 22

Section 22. Section 61-32-31 NMSA 1978 (being Laws 1993, Chapter 204, Section 31) is amended to read:

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

REPEAL.--The board of thanatopractice is terminated on July 1, 2005, 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, 2006. Effective July 1, 2006, the Thanatopractice Act is repealed."

SENATE BILL 409, AS AMENDED

CHAPTER 285

RELATING TO WATER; ENACTING THE GROUND WATER STORAGE AND RECOVERY ACT; PROVIDING PENALTIES.

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

Chapter 285 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Ground Water Storage and Recovery Act".

Chapter 285 Section 2

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. conjunctive use and administration of both surface and ground waters are essential to the effective and efficient use of the state's limited water supplies; and

B. ground water recharge, storage and recovery have the potential to:

(1) offer savings in the costs of capital investment, operation and maintenance and flood control and may improve water and environmental quality;

(2) reduce the rate at which ground water levels will decline and may prevent overstressing or dewatering aquifer systems;

(3) promote conservation of water within the state;

(4) serve the public welfare of the state; and

(5) may lead to more effective use of the state's water resources.

Chapter 285 Section 3

Section 3. DEFINITIONS.--As used in the Ground Water Storage and Recovery Act:

A. "aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing and transmitting water in usable quantities to a well;

B. "area of hydrologic effect" means the underground area where the water is stored and located, hydrologically connected surface waters, adjacent underground areas in which water rights exist that may be impaired, the land surface above the underground areas and any additional land surface used for seepage or infiltration;

C. "governmental entity" means Indian nation, tribe or pueblo or state political subdivision, including municipality, county, acequia, irrigation district or conservancy district.

D. "project" means a permitted, engineered facility designed specifically, constructed and operated, pursuant to the Ground Water Storage and Recovery Act, to add measured volumes of water by injection or infiltration to an aquifer or system of aquifers, to store the water underground and to recover it for beneficial use pursuant to the Ground Water Storage and Recovery Act but shall not include in situ leach mining operations or water flood operations for petroleum recovery that require approval by the state engineer outside the Ground Water Storage and Recovery Act; and

E. "stored water" means water that has been stored underground for the purpose of recovery and permitted pursuant to the Ground Water Storage and Recovery Act.

Chapter 285 Section 4

Section 4. PERMIT REQUIRED.--

A. No governmental entity may construct and operate a storage and recovery project in a declared ground water basin without a permit from the state engineer and other permits that may be required.

B. The state engineer shall prescribe application forms for a permit. The application shall include:

(1) an application fee in the amount of five thousand dollars ($5,000) plus five dollars ($5.00) per acre-foot of the annual capacity of the proposed storage and recovery project, not to exceed fifty thousand dollars ($50,000); an annual fee of fifty cents ($.50) per acre-foot of water stored, payable upon submission of the annual report required by the Ground Water Storage and Recovery Act;

(2) the name and mailing address of the applicant;

(3) the name and mailing address of the owner of the land on which the applicant proposes to operate the project;

(4) the name of the declared underground water basin in which the applicant proposes to operate the project;

(5) the legal description of the location of the proposed project;

(6) evidence of financial and technical capability;

(7) the source, annual quantity and quality of water proposed to be injected and the quality of water in the receiving aquifer;

(8) the identification, characteristics, capacity and location of each recharge and recovery well, including existing pre-basin wells, existing permitted wells and new wells sought to be drilled for recharge or recovery pursuant to the application and the identification of existing permitted and declared wells in the underground area effected by storage and recovery operations;

(9) a description of the proposed project, including its capacity, plan of operation and percentage of anticipated recoverable water;

(10) evidence that the applicant has a valid water right quantified by one of the following legal processes:

(a) a water rights adjudication;

(b) a consent decree;

(c) an act of congress, including a negotiated settlement ratified by congress;

(d) a contract pursuant to 43 USC 620 et. seq.; or

(e) an agreement with an owner who has a valid water right subject to an application for a change in purpose, place of use or point of diversion;

(11) a project plan that:

(a) shows that the project will not cause harm to users of land and water within the area of hydrologic effect;

(b) demonstrates that the project is hydrologically feasible;

(c) demonstrates that the project will not impair existing water rights or the state's interstate obligations;

(d) demonstrates that the project will not be contrary to the conservation of water within the state; and

(e) demonstrates that the project will not be detrimental to the public welfare of the state;

(12) a sworn statement executed by the owner of the land that the applicant is granted an easement and authorization to construct and operate the project on the site, if project facilities are located on land not owned by the applicant;

(13) copies of completed applications for all other permits required under state and federal law;

(14) the proposed duration of the permit; and

(15) any additional information required by the state engineer.

Chapter 285 Section 5

Section 5. NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--JUDICIAL REVIEW.--

A. Upon receipt of an application for a permit to construct and operate a project, the state engineer shall endorse on the application the date it was received and shall keep a record of the application. The state engineer shall conduct an initial review of the application within sixty days of receipt. If the state engineer determines in the initial review that the application is incomplete, the state engineer shall notify the applicant of the application's deficiencies. The application shall remain incomplete until the applicant provides all information required by the Ground Water Storage and Recovery Act. The state engineer may request additional information from the applicant and shall conduct an investigation of the project.

B. Within thirty days after determining that an application is complete, unless an extension is requested by the applicant, the applicant shall publish a notice of the application in a newspaper of general circulation in the county in which persons reside who could reasonably be expected to be affected by the project. The notice shall be given once a week for three consecutive weeks and shall contain:

(1) the legal description of the location of the proposed project;

(2) a brief description of the proposed project, including its capacity;

(3) the name of the applicant;

(4) the date of the last publication;

(5) the requirements for an objection; and

(6) disclosure that objections to the application shall be filed within ten days after the last publication of the notice.

C. A person objecting that the granting of the application will impair the objector's water right, will be contrary to the conservation of water or will be detrimental to the public welfare and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests; provided, however, that the state or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file objections or protests.

D. An objection shall be filed in writing, include the name and mailing address of the objector, identify the grounds for the objection and include the signature of the objector or his legal representative. The state engineer shall schedule a hearing on the application and provide at least thirty days' notice of the hearing, by certified mail, to the applicant and any objector.

E. After the expiration of the time for filing objections, if no objections have been filed, the state engineer shall, if he finds that the application meets the requirements of the Ground Water Storage and Recovery Act, issue a permit to the applicant to construct the project to store and recover all or a part of the waters applied for, as conditioned by the state engineer.

F. A person or governmental entity aggrieved by any decision of the state engineer may appeal that decision to the district court pursuant to Section 72-7-1 NMSA 1978.

Chapter 285 Section 6

Section 6. STATE ENGINEER--POWERS AND DUTIES--PERMIT--MONITORING REQUIREMENTS.--

A. The state engineer shall issue a permit to construct and operate a project if the applicant has provided a reasonable demonstration that:

(1) the applicant has the technical and financial capability to construct and operate the project;

(2) the project is hydrologically feasible;

(3) the project will not impair existing water rights or the state's interstate obligations;

(4) the project will not be contrary to the conservation of water within the state;

(5) the project will not be detrimental to the public welfare of the state;

(6) the applicant has completed applications for all permits required by state and federal law;

(7) the applicant has a valid water right quantified by one of the following legal processes:

(a) a water rights adjudication;

(b) a consent decree;

(c) an act of congress, including a negotiated settlement ratified by congress;

(d) a contract pursuant to 43 USC 620 et. seq.; or

(e) an agreement with an owner who has a valid water right subject to an application for a change in purpose, place of use or point of diversion; and

(8) that the project will not cause harm to users of land and water within the area of hydrologic effect;

B. A permit for a project shall include:

(1) the name and mailing address of the person to whom the permit is issued;

(2) the name of the declared underground water basin in which the project will be located;

(3) the capacity and plan of operation of the project;

(4) any monitoring program required;

(5) all conditions required by or regulations adopted pursuant to the Ground Water Storage and Recovery Act; and

(6) other information the state engineer determines to be necessary.

C. The permit shall not become effective until the applicant obtains all other required state and federal permits.

D. The state engineer shall adopt regulations to carry out the provisions of the Ground Water Storage and Recovery Act, including monitoring the operation of projects and their effects on other water users in the area of hydrologic effect, including an Indian nation, tribe or pueblo. In determining monitoring requirements, the state engineer shall cooperate with all government entities that regulate and monitor the quality of water, including the department of environment.

Chapter 285 Section 7

Section 7. MODIFICATION AND ASSIGNMENT OF PROJECT PERMIT.--

A. The state engineer may modify the conditions of a permit if he finds that modifications are necessary and will not impair existing water rights or the water quality of the aquifer. The applicant shall provide notice of any proposed modifications as required by the Ground Water Storage and Recovery Act for new applications. Objections may be filed in the manner of objections to new applications.

B. The permittee may apply to the state engineer for approval to assign a permit to another person. The state engineer shall approve the assignment if the state engineer determines that all provisions of the Ground Water Storage and Recovery Act will be met.

Chapter 285 Section 8

Section 8. STORED WATER NOT PUBLIC--STORED WATER NOT SUBJECT TO FORFEITURE--USE OR EXCHANGE OF RECOVERED WATER.--

A. Water added to an aquifer or system of aquifers to be stored for subsequent diversion and application to beneficial use pursuant to a project permit is not public water and is not subject to forfeiture pursuant to Section 72-5-28 or 72-12-8 NMSA 1978.

B. A permittee may use water recovered only for the same purposes for which the water was authorized before it was stored, unless an application for a change in the purpose of use, place of use or point of diversion is filed and approved pursuant to Section 72-5-23, 72-5-24 or 72-12-7 NMSA 1978, as applicable.

Chapter 285 Section 9

Section 9. STORAGE ACCOUNT TO BE ESTABLISHED--LIMIT ON AMOUNT OF WATER RECOVERED.--The state engineer shall establish a storage account for each project. If the project has stored water from more than one source, he shall establish subaccounts for each source of water. A permittee may recover only the recoverable amount of stored water from a well. For purposes of this section, "recoverable amount" means that amount of water, as determined by the state engineer, that has reached the aquifer, remained within the area of hydrologic effect and is conducive to recovery without impairment to existing uses.

Chapter 285 Section 10

Section 10. ANNUAL REPORT TO STATE ENGINEER--PENALTY FOR FAILURE TO FILE.--

A. Each permittee shall file an annual report with the state engineer that includes:

(1) the total quantity of stored water and recovered water;

(2) the water quality of the stored water, the receiving aquifer and the recovered water;

(3) a sworn affidavit attesting to the truthfulness and accuracy of the report's data; and

(4) a measurement of the static level of the water table.

B. The annual report shall be maintained on a calendar year basis and shall be filed with the state engineer no later than March 31 for the preceding year. If a governmental entity required to file an annual report fails to do so when due, the state engineer may assess and impose a penalty of five hundred dollars ($500) for each month or portion of a month that the report is not filed. The total penalty assessed annually pursuant to this subsection shall not exceed five thousand dollars ($5,000).

C. All records and reports required to be maintained and filed pursuant to this section shall be in a form prescribed by the state engineer.

Chapter 285 Section 11

Section 11. REVOCATION OR SUSPENSION OF PERMITS--ORDERS TO CEASE AND DESIST--INJUNCTION.--

A. The state engineer may periodically review a project to determine if the permittee is complying with the terms and conditions of the permit. The state engineer may permanently revoke or temporarily suspend a permit for good cause after an investigation and a hearing before the state engineer or a hearing officer appointed by him. Notice shall be sent, by certified mail, to the permittee at least thirty days before any hearing on a revocation or suspension disclosing the permittee's alleged failure to comply with the permit's terms and conditions.

B. Except as otherwise provided in this section, if the state engineer has reason to believe that a person or governmental entity has violated a provision of the Ground Water Storage and Recovery Act or a permit issued or regulation adopted pursuant to that act, the state engineer may issue a written notice that the person or governmental entity appear and show cause, at a hearing before the state engineer not less than fifteen days after the receipt of the notice, why the person or governmental entity should not be ordered to cease and desist from the violation. The notice shall inform the person or governmental entity of the date, time and place of the hearing and the consequences of the person's or governmental entity's failure to appear.

C. If the state engineer finds that a person or governmental entity is constructing or operating a project in violation of the Ground Water Storage and Recovery Act, the state engineer may issue a temporary order for the person or governmental entity to cease

and desist the construction or operation pending final action by the state engineer pursuant to this section. The order shall include written notice to the person or governmental entity of the date, time and place where the person or governmental entity shall appear at a hearing before the state engineer to show cause why the temporary order should be vacated. The hearing shall be held not less than fifteen days after the date of the order.

D. After a hearing pursuant to this section, or after the expiration of the time to appear, the state engineer shall issue a decision and order. The decision and order shall be in a form as the state engineer determines to be reasonable and appropriate and may include a determination of violation, an order to cease and desist, the recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. Any person or governmental entity affected may appeal the decision to the district court pursuant to Section 72-7-1 NMSA 1978.

E. If a person or governmental entity continues a violation after the state engineer has issued a decision and order pursuant to this section or a temporary order pursuant to this section, the state engineer may apply for a temporary restraining order or a preliminary or permanent injunction from the district court. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against a violator.

Chapter 285 Section 12

Section 12. PENALTIES.--

A. A person who or governmental entity that is determined to be in violation of the Ground Water Storage and Recovery Act or a permit issued or rules adopted pursuant to the act may be assessed a civil penalty in an amount not exceeding:

(1) one hundred dollars ($100) per day of violation not directly related to the illegal recovery or use of stored water; or

(2) ten thousand dollars ($10,000) per day of violation directly related to the illegal recovery or use of stored water.

B. An action to recover penalties pursuant to this section shall be brought by the state engineer in the district court in which the violation occurred.

Chapter 285 Section 13

Section 13. CONSERVATION FEE EXEMPTIONS.--Conservation fees collected pursuant to Section 74-1-13 NMSA 1978 shall be charged only on water that is treated and stored underground and not on the same water subsequently recovered.

Chapter 285 Section 14

Section 14. OBLIGATIONS TO INDIAN NATIONS, TRIBES OR PUEBLOS.--Nothing in the Ground Water Storage and Recovery Act shall be construed to affect the obligations of the United States to Indian nations, tribes or pueblos or to impair the rights of Indian nations, tribes or pueblos.

Chapter 285 Section 15

Section 15. NON-EXEMPTION FROM PRIOR APPROPRIATION DOCTRINE.--Unless required by interstate obligations, nothing in the Ground Water Storage and Recovery Act shall be construed to exempt stored water from the provision that priority in time shall give the better right pursuant to Chapter 72 NMSA 1978 or priority of appropriation shall give the better right pursuant to Article 16, Section 2 of the constitution of New Mexico.

Chapter 285 Section 16

Section 16. LIMITATION OF DETERMINATION.--Any determination made by the state engineer for purposes of the Ground Water Storage and Recovery Act is not binding in any other proceeding.

Chapter 285 Section 17

Section 17. DELAYED IMPLEMENTATION.--A governmental entity shall not submit an application pursuant to the Ground Water Storage and Recovery Act and the state engineer shall not process an application, issue a regulation pursuant to that act or implement any part of that act unless the state engineer has been appropriated enough money or has sufficient resources to carry out the provisions of that act.

SENATE CONSERVATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 84, AS AMENDED

CHAPTER 286

RELATING TO RETIREE HEALTH CARE; INCREASING THE CAP ON ANNUAL RETIREE BASIC PLAN PREMIUM INCREASES.

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

Chapter 286 Section 1

Section 1. Section 10-7C-13 NMSA 1978 (being Laws 1990, Chapter 6, Section 13, as amended) is amended to read:

"10-7C-13. PAYMENT OF PREMIUMS ON HEALTH CARE PLANS.--

A. Each eligible retiree shall pay a monthly premium for the basic plan in an amount set by the board not to exceed the sum of fifty dollars ($50.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent in any fiscal year. In addition to the monthly premium for the basic plan, each current retiree and nonsalaried eligible participating entity governing authority member who becomes an eligible retiree shall also pay monthly an additional participation fee set by the board. That fee shall be five dollars ($5.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed nine percent in any fiscal year. The additional monthly participation fee paid by the current retirees and nonsalaried eligible participating entity governing authority members who become eligible retirees shall be a consideration and a condition for being permitted to participate in the Retiree Health Care Act. Eligible dependents shall pay monthly premiums in amounts that with other money appropriated to the fund shall cover the cost of the basic plan for the eligible dependents.

B. Eligible retirees and eligible dependents shall pay monthly premiums to cover the cost of the optional plans that they elect to receive, and the board shall adopt rules for the collection of additional premiums from eligible retirees and eligible dependents participating in the optional plans. An eligible retiree or eligible dependent may authorize the authority in writing to deduct the amount of these premiums from the monthly annuity payments, if applicable.

C. The participating employers, active employees and retirees are responsible for the financial viability of the program. The overall financial viability is not an additional financial obligation of the state."

SENATE BILL 263, AS AMENDED

CHAPTER 287

RELATING TO GAMING; AMENDING CERTAIN PROVISIONS OF THE NEW MEXICO LOTTERY ACT TO IMPROVE THE ADMINISTRATION OF THE NEW MEXICO LOTTERY AND CLARIFY EXISTING LAW; DECLARING AN EMERGENCY.

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

Chapter 287 Section 1

Section 1. Section 6-24-12 NMSA 1978 (being Laws 1995, Chapter 155, Section 12) is amended to read:

"6-24-12. EXECUTIVE VICE PRESIDENT FOR SECURITY-- QUALIFICATIONS--DUTIES.--

A. The chief executive officer shall hire an executive vice president for security, who shall be qualified by training and experience, including at least five years of law

enforcement experience, and be knowledgeable and experienced in computer security. The executive vice president for security shall take direction as needed from the chief executive officer and shall be accountable to the board.

B. The executive vice president for security shall:

(1) be the chief administrative officer of the security division of the authority, which is designated as a law enforcement agency for the purposes of administering the security provisions of the New Mexico Lottery Act;

(2) be responsible for assuring the security, honesty, fairness and integrity of the operation and administration of the lottery and to that end shall institute all necessary security measures, including an examination of the background of all prospective employees, lottery retailers, lottery vendors and lottery contractors;

(3) in conjunction with the chief executive officer, confer with the attorney general or his designee to promote and ensure the security, honesty, fairness and integrity of the operation and administration of the lottery; and

(4) in conjunction with the chief executive officer, report any alleged violation of law to the attorney general or any other appropriate law enforcement authority for further investigation and action.

C. The executive vice president for security and the employees of the division assigned by him as security agents shall be commissioned by the board as peace officers with full powers of arrest in the performance of their duties. These peace officers shall seek and must obtain certification pursuant to the provisions of the Law Enforcement Training Act.

D. The department of public safety in conjunction with the authority shall develop policy and procedures to require background checks. The policy and procedures shall require the fingerprinting of all board members and prospective employees. Fingerprint cards will be submitted to the department of public safety records bureau for processing through the federal bureau of investigation. The department of public safety will not disseminate the criminal history information to the authority.

E. An applicant for consideration shall be fingerprinted and shall provide two fingerprint cards to the department of public safety. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with Section 6-24-18 NMSA 1978. Other information contained in the federal bureau of investigation record supported by independent evidence can form the basis for the denial, suspension or revocation for good and just cause. Such records and any related information shall be privileged and shall not be disclosed to individuals not directly involved in the decisions affecting the specific applicants or employees. The authority shall pay for the cost of obtaining the federal bureau of investigation record. The department of public safety shall implement the provisions of this section on or before July 1, 1999."

Chapter 287 Section 2

Section 2. Section 6-24-21 NMSA 1978 (being Laws 1995, Chapter 155, Section 21) is amended to read:

"6-24-21. DRAWINGS FOR AND PAYMENT OF PRIZES--UNCLAIMED PRIZES--APPLICABILITY OF TAXATION.--

A. All lottery prize drawings shall be open to the public. If the prior written approval of the chief executive officer and the executive vice president for security are obtained, the selection of winning entries may be performed by an employee of the lottery. A member of the board shall not perform the selection of a winning entry. Drawings for a prize of more than five thousand dollars ($5,000) shall be conducted and videotaped by the security division and witnessed by the internal auditor of the authority or his designee. Promotional drawings for a prize of less than five thousand dollars ($5,000) are exempt from the requirements of this subsection if prior written approval is given by the chief executive officer and the executive vice president for security. All lottery drawing equipment used in public drawings to select winning numbers or entries or participants for prizes shall be examined and tested by the chief executive officer's staff and the internal auditor of the authority or his designee prior to and after each public drawing.

B. Any lottery prize is subject to applicable state taxes. The authority shall report to the state and federal taxing authorities any lottery prize exceeding six hundred dollars ($600).

C. The authority shall adopt rules, policies and procedures to conduct fair and equitable drawings and establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, provided:

(1) no prize shall be paid upon a ticket purchased or sold in violation of the New Mexico Lottery Act. Any such prize shall constitute an unclaimed prize for purposes of this section;

(2) the authority is discharged from all liability upon payment of a prize;

(3) the board may by rule provide for the payment of prizes by lottery retailers, whether or not the lottery retailer sold the winning ticket, whenever the amount of the prize is less than an amount set by board rule. Payment shall not be made directly to a player by a machine or a mechanical or electronic device;

(4) prizes not claimed within the time period established by the authority are forfeited and shall be paid into the prize fund. No interest is due on a prize when a claim is delayed;

(5) the right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order;

(6) until a signature or mark is placed on a ticket in the area designated for signature, a ticket is owned by the bearer of the ticket, but after a signature or mark is placed on a ticket in the area designated for signature, a ticket is owned by the person whose signature or mark appears, and that person is entitled to any prize attributable to the owner; and

(7) the authority is not responsible for lost or stolen tickets."

Chapter 287 Section 3

Section 3. Section 6-24-29 NMSA 1978 (being Laws 1995, Chapter 155, Section 29) is amended to read:

"6-24-29. UNLAWFULLY INFLUENCING AND FRAUD--PENALTIES.--

A. It is unlawful to knowingly:

(1) influence the winning of a prize through the use of coercion, fraud, deception or tampering with lottery equipment or materials;

(2) make a material false statement in any application for selection as a lottery retailer or any lottery vendor proposal or other proposal to conduct lottery activities or to make a material false entry in any book or record that is compiled or maintained or submitted pursuant to the provisions of the New Mexico Lottery Act;

(3) obtain or attempt to obtain access to a computer database or information maintained by the authority without the specific written authorization of the authority; or

(4) obtain or attempt to obtain access to a computer database or information maintained by a person pursuant to a contract with the authority without the specific written authorization of the authority.

B. Any person who violates any provision of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Chapter 287 Section 4

Section 4. Section 6-24-30 NMSA 1978 (being Laws 1995, Chapter 155, Section 30) is amended to read:

"6-24-30. CONFLICTS OF INTEREST--PENALTIES.--

A. It is unlawful for the chief executive officer, a board member or any employee of the authority or any person residing in the household of the officer, board member or employee to:

(1) have, directly or indirectly, an interest in a business, knowing that such business contracts with the lottery for a major procurement, whether such interest is as a natural person, partner, member of an association, stockholder or director or officer of a corporation; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality having an aggregate value of more than twenty dollars ($20.00) in any calendar year, except for food and beverages consumed by the recipient at the time of receipt, from a person, knowing that the person:

(a) contracts or seeks to contract with the state to supply gaming equipment, materials, lottery tickets or consulting services for use in the lottery; or

(b) is a lottery retailer.

B. It is unlawful for a lottery retailer or a lottery vendor to offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, service or hospitality having an aggregate value of more than twenty dollars ($20.00) in any calendar year, except food and beverages consumed by the recipient at the time of receipt, to a person, knowing the person is the chief executive officer, a board member or an employee of the authority, or a person residing in the household of the officer, board member or employee.

C. Any person who violates any provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. If a board member, the chief executive officer or an employee of the authority, or any person residing in the household thereof, is convicted of a violation of this section, that board member, chief executive officer or employee shall be removed from office or employment with the authority."

Chapter 287 Section 5

Section 5. Section 6-24-31 NMSA 1978 (being Laws 1995, Chapter 155, Section 31) is amended to read:

"6-24-31. FORGERY OF LOTTERY TICKET--PENALTY.--

A. It is unlawful to falsely make, alter, forge, pass, present or counterfeit, with intent to defraud, a lottery ticket, or receipt for the purchase thereof, issued or purported to have been issued by the lottery under the New Mexico Lottery Act.

B. It is unlawful to steal, knowingly possess or attempt to redeem stolen lottery tickets.

C. A person who violates the provisions of Subsection A of this section when:

(1) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is one hundred dollars ($100) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than one hundred dollars ($100) but not more than one thousand dollars ($1,000) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than one thousand dollars ($1,000) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) the value of all things received in return for the forged lottery ticket or forged receipt for the purchase of a lottery ticket is more than twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A person who violates the provisions of Subsection B of this section when:

(1) the face value of the lottery tickets is one hundred dollars ($100) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) the face value of the lottery tickets is more than one hundred dollars ($100) but not more than one thousand dollars ($1,000) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) the face value of the lottery tickets is more than one thousand dollars ($1,000) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) the face value of the lottery tickets is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) the face value of the lottery tickets is more than twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Chapter 287 Section 6

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

SENATE BILL 271, AS AMENDED

SIGNED April 8, 1999

CHAPTER 288

RELATING TO HUMAN RIGHTS; AMENDING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR PUBLIC ACCESS FOR ASSISTANCE ANIMALS AND THEIR TRAINERS.

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

Chapter 288 Section 1

Section 1. Section 28-11-2 NMSA 1978 (being Laws 1989, Chapter 242, Section 1) is amended to read:

"28-11-2. DEFINITIONS.--As used in Section 28-11-3 NMSA 1978, "qualified assistance animal" means:

A. a dog trained or being trained by a recognized school for training dogs to assist persons with disabilities;

B. an animal recognized as a service animal pursuant to the Americans with Disabilities Act of 1990; or

C. any other animal approved by the governor's committee on concerns of the handicapped as acceptable in public places and trained to provide some special assistance to a person with a disability."

Chapter 288 Section 2

Section 2. Section 28-11-3 NMSA 1978 (being Laws 1989, Chapter 242, Section 2) is amended to read:

"28-11-3. ADMITTANCE OF QUALIFIED ASSISTANCE ANIMALS.-- Notwithstanding any other provision of law, a qualified assistance animal shall be admitted to any building open to the public and to all public accommodations such as restaurants, hotels, hospitals, swimming pools, stores, common carriers and theaters; provided that the qualified assistance animal is under the control of a person with a disability or a trainer of assistance animals. No person shall be required to pay any additional charges for his qualified assistance animal, but shall be liable for any damage done by his qualified assistance animal."

SENATE BILL 357

CHAPTER 289

RELATING TO INSURANCE; AMENDING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Chapter 289 Section 1

Section 1. Section 59A-5-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 88) is amended to read:

"59A-5-21. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. To apply for an original certificate of authority in this state the insurer shall file with the superintendent its written application therefor on forms as prescribed and furnished by the superintendent, accompanied by the applicable fees as specified or referred to in Section 59A-6-1 NMSA 1978, stating under the oath of the president or vice president or other chief officer and the secretary of the insurer, or of the attorney-in-fact (if a reciprocal insurer or Lloyds insurer), the insurer's name, location of its home office, or principal office, in the United States (if an alien insurer), the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional or other information as the superintendent may reasonably require, together with the following documents:

(1) if a corporation, a copy of its charter or certificate or articles of incorporation, together with all amendments thereto, or as restated and amended under the laws of its state or country of domicile, currently certified by the public officer with whom the originals are on file in such state or country;

(2) if a domestic incorporated insurer of a mutual insurer, a copy of its bylaws, certified by its corporate secretary;

(3) if a reciprocal insurer or Lloyds insurer, a copy of the power of attorney of its attorney-in-fact, certified by the attorney-in-fact; and if a domestic reciprocal insurer or a

Lloyds insurer, additional documentation showing that it has been properly formed and is lawfully existing under applicable laws;

(4) a complete copy of its financial statement as of not earlier than the December 3l next preceding, in form as customarily used in the United States by like insurers, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory officer of the insurer's state of domicile, or of entry into the United States if an alien insurer;

(5) a copy of the report of last examination made of the insurer certified by the public insurance supervisory officer of its state of domicile, or of entry into the United States if an alien insurer;

(6) appointment of the superintendent pursuant to Section 59A-5-31 NMSA 1978 as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public insurance supervisory officer of its state or country of domicile showing that it is authorized or qualified for authority to transact in such state or country the kinds of insurance proposed to be transacted in this state;

(8) if a foreign insurer, a certificate as to a deposit elsewhere if to be tendered pursuant to Section 59A-5-18 or 59A-5-20 NMSA 1978;

(9) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records; and

(10) designation by the insurer of its officer or representative authorized to appoint and remove its agents in this state.

B. If the superintendent so requests, the applicant insurer shall supplement the documents and information above required with true biographical information concerning the members of the insurer's board of directors or other governing body and its principal operating officers, together with proof of identity of each such individual."

Chapter 289 Section 2

Section 2. 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 and receipt for, and persons so served shall pay to the superintendent, fees, licenses and miscellaneous charges as follows:

A. insurer's certificate of authority -

(1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application $1,000.00

(2) annual continuation of certificate of authority, per kind of insurance, each year continued. . 200.00

(3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978) 150.00

(4) amendment to certificate of authority 200.00

B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA 1978) 10.00

C. annual statement of insurer, filing 200.00

D. service of process, acceptance by superintendent and issuance of certificate of service, where issued 10.00

E. agents' licenses and appointments -

(1) filing application for original agent license and issuance of license, if issued 30.00

(2) appointment of agent -

(a) filing appointment, per kind of insurance, each insurer 20.00

(b) continuation of appointment, each insurer, each year continued 20.00

(3) variable annuity agent's license -

(a) filing application for license and issuance of license, if issued 30.00

(b) continuation of appointment each year 20.00

(4) temporary license as to life and health insurance or both 30.00

(a) as to property insurance 30.00

(b) as to casualty/surety insurance 30.00

(c) as to vehicle insurance 30.00

F. solicitor license -

(1) filing application for original license and issuance of license, if issued 30.00

(2) continuation of appointment, per kind of insurance, each year 20.00

G. broker license -

(1) filing application for license and issuance of original license, if issued 30.00

(2) annual continuation of license 30.00

H. insurance vending machine license -

(1) filing application for original license and issuance of license, if issued, each machine 25.00

(2) annual continuation of license, each machine 25.00

I. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules and regulations, and payable as to each instance of examination 50.00

J. surplus line broker license -

(1) filing application for original license and issuance of license, if issued 100.00

(2) annual continuation of license . .100.00

K. adjuster license -

(1) filing application for original license and issuance of license, if issued 30.00

(2) annual continuation of license 30.00

L. rating organization or rating advisory organization license -

(1) filing application for license and issuance of license, if issued 100.00

(2) annual continuation of license 100.00

M. nonprofit health care plans -

(1) filing application for preliminary permit and issuance of permit, if issued 100.00

(2) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(3) annual statement, filing 200.00

(4) agents and solicitors -

(a) filing application for original license and issuance of license, if issued 30.00

(b) examination for license conducted directly by superintendent, each instance of examination 50.00

(c) annual continuation of appointment 20.00

N. prepaid dental plans -

(1) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(2) annual report, filing 200.00

(3) agents and solicitors -

(a) filing application for original license and issuance of license, if issued 30.00

(b) examination for license conducted directly by superintendent, each instance of examination 50.00

(c) continuation of license, each year 20.00

O. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

P. premium finance companies -

(1) filing application for original license and issuance of license, if issued 100.00

(2) annual renewal of license 100.00

Q. motor clubs -

(1) certificate of authority -

(a) filing application for original certificate of authority and issuance of certificate of authority, if issued 200.00

(b) annual continuation of certificate of authority 100.00

(2) sales representatives -

(a) filing application for registration or license and issuance of registration or license, if issued, each representative 20.00

(b) annual continuation of registration or license, each representative 20.00

R. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, if issued 30.00

(2) examination for license conducted directly by superintendent, each instance of examination 50.00

(3) continuation of appointment, each year 20.00

S. securities salesperson license -

(1) filing application for license and issuance of license, if issued 25.00

(2) renewal of license, each year 25.00

T. for each signature and seal of the superintendent affixed to any instrument 10.00

U. required filing of forms or rates -

(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

V. health maintenance organizations -

(1) filing an application for a certificate of authority 1,000.00

(2) annual continuation of certificate of authority, each year continued 200.00

(3) filing each annual report 200.00

(4) filing an amendment to organizational documents requiring approval 200.00

(5) filing informational amendments 50.00

(6) agents and solicitors -

(a) filing application for original license and issuance of license, if issued 30.00

(b) examination for license, each instance of examination 50.00

(c) annual continuation of appointment 20.00

W. purchasing groups and foreign risk retention groups -

(1) original registration 500.00

(2) annual continuation of registration 200.00

(3) agent or broker fees same as for authorized insurers.

Notwithstanding the fees required in this subsection, an insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, or both, whenever any form or rate-filing fees in excess of those imposed by the laws of this state are charged to insurers in New Mexico doing business in another state or whenever any condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees shall be imposed upon every insurer from every other state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer fails to comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent shall refuse to grant or shall withdraw approval of the tendered form or rate filing.

Except as to certain appointment fees as specified in Section 59A-11-8 NMSA 1978, all fees are deemed earned when paid and are not refundable."

Chapter 289 Section 3

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 INSURANCE DEPARTMENT COLLECTIONS.--

A. All money received by the insurance department for fees, licenses, penalties and taxes shall be paid daily by the superintendent to the state treasurer and by him credited to the "insurance department suspense fund" except as provided by:

(1) the Law Enforcement Protection Fund Act; and

(2) Section 59A-6-1.1 NMSA 1978.

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.

C. At the end of every month, the treasurer shall transfer to the "fire protection fund" the balance remaining in the insurance department suspense fund after applicable refunds made pursuant to Subsection B of this section, and derived from property and vehicle insurance business, and transfer to the general fund the balance remaining in the insurance department suspense fund derived from all other kinds of insurance business."

Chapter 289 Section 4

Section 4. Section 59A-11-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 181) is amended to read:

"59A-11-2. APPLICATION FOR LICENSE--INDIVIDUAL.--

A. Where a license is required under the Insurance Code for categories referred to in Section 59A-11-1 NMSA 1978, application by an individual shall be filed with, and on a form prescribed and furnished by, the superintendent. The application shall be signed by the applicant, under oath if required by the form, and by or on behalf of the proposed principal where expressly required in the form.

B. The application form may require information about applicant as to:

(1) name, date of birth, social security number, residence and business address if applicable;

(2) personal history, business experience in general;

(3) experience or special training or education in the kind of business to be transacted under the license applied for;

(4) previous licensing;

(5) type of license applied for and kinds of insurance or transactions to be covered thereby;

(6) proof of applicant's identity; and

(7) such other pertinent information and matters as the superintendent may reasonably require.

C. Application for license as insurance agent shall be accompanied by appointment of the applicant as agent by at least one insurer, conditioned upon issuance of the license. Application for license as insurance solicitor or as agent or solicitor as to dental and health care plan, motor club, bail bondsman, and other principals shall be accompanied by appointment of the applicant by the proposed principal as solicitor or agent, as the case may be, subject to issuance of the license applied for.

D. In all such appointments the principal or principal's representative if so required by the superintendent shall certify in writing as to his knowledge of the applicant, as to applicant's residence, experience had or special training received or to be given as to business to be transacted under the license, applicant's business and personal reputation, whether applicant is trustworthy and worthy of licensing, and whether satisfied that applicant intends in good faith to engage in the business to be covered by the license, and appointment of applicant is not to enable applicant to evade the intent or spirit of any controlled business, anti-rebate or anti-discrimination law or other law.

E. The application form shall also require information as to additional matters expressly required to be included therein in articles of the Insurance Code relating to particular licenses.

F. The application shall be accompanied by the applicable license application filing fee specified in Section 59A-6-1 NMSA 1978, by bond where expressly required under other provisions of the Insurance Code, and by the fee specified in such fee schedule for any examination required under the Insurance Code to be taken and passed by the applicant prior to licensing."

Chapter 289 Section 5

Section 5. Section 59A-11-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 189) is amended to read:

"59A-11-10. CONTINUATION, EXPIRATION OF LICENSE.--

A. Each license, other than insurance agent, issued under this article shall continue in force until it is suspended, revoked or otherwise terminated, but except as may be provided pursuant to Section 59A-11-11 NMSA 1978, subject to payment to the superintendent annually on or before April 1, or December 31 as to motor club representatives, of the applicable continuation fee specified in Section 59A-6-1 NMSA 1978 accompanied by request for such continuation:

(1) for broker, surplus line broker, independent adjuster, bail bondsman license and similar other independent licensees, request shall be made and signed by the licensee;

(2) for agent (other than insurance agent) or staff adjuster, or solicitor license, request shall be made and signed by the employer or other principal, as applicable; or

(3) for vending machine, request shall be made and signed by the supervisory agent thereof.

B. Subject to Section 59A-11-11 NMSA 1978, any license referred to in Subsection A of this section, not so continued shall be deemed to have terminated as of midnight on April 30, or December 31 as to motor club representatives, then current; except that the superintendent may effectuate a request for continuation received within thirty days thereafter if accompanied by annual continuation fee equal to one hundred fifty percent of the continuation fee otherwise required.

C. An insurance agent's license shall continue in force while there is in effect as to the licensee as shown by the superintendent's records an appointment or appointments as agent of authorized insurers covering collectively all of the kinds of insurance included in the agent's license. Upon termination of all the licensee's agent appointments as to a particular kind of insurance and failure to replace such appointment within sixty days thereafter, the license shall expire and terminate as to such kind of insurance; and the licensee shall promptly deliver the license to the superintendent for reissuance, without fee or charge, as to the kinds of insurance covered by the licensee's remaining agent appointments. Upon termination of all of the licensee's agent appointments under the license, the license shall forthwith terminate.

D. If the superintendent has reason to believe that the competence of any licensee, or individual designated to exercise license powers, is questionable, the superintendent may require as condition to continuation of the license or license powers that the licensee or individual take and pass to the superintendent's satisfaction a written examination as required under the Insurance Code of new individual applicants for similar license.

E. This section shall not apply as to temporary licenses, which shall be for such duration and subject to extension as provided in the respective sections of the Insurance Code by which such licenses are authorized.

F. All licenses and appointments as to an insurer or other principal which ceases to be authorized to transact business in this state shall automatically terminate without notice as of date of such cessation.

G. A license shall also terminate upon death of the licensee, if an individual, or dissolution if a corporation, or change in partnership members if a firm; subject, in case of a firm, to continuation of the license for a reasonable period while application for new license is being made or pending, under reasonable conditions provided in regulations of the superintendent."

Chapter 289 Section 6

Section 6. Section 59A-12-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 205) is amended to read:

"59A-12-4. "SOLICITOR" DEFINED.--For the purposes of Chapter 59A, Article l2 NMSA 1978 a "solicitor" is an individual employed by a licensed agent to solicit insurance and perform such other duties in handling the agent's business as the agent may authorize."

Chapter 289 Section 7

Section 7. Section 59A-12-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 209) is amended to read:

"59A-12-8. CONTROLLED BUSINESS.--

A. The superintendent shall not issue or permit to remain in force a license as agent, solicitor, or broker or if the superintendent finds or has cause to believe that the license has been or probably will be used chiefly for the purpose of writing insurance on the lives, property or risks of the licensee or proposed licensee, or of his family members, employees, employer, business associates, or directors, officers, employees or principal stockholders of a corporation by which he is employed or retained, or of which he is an officer, director or principal stockholder, or members or employees of any firm or other business entity with which he is associated or by which he is employed or retained.

B. A license shall be deemed used or to be used for writing of such controlled business if the superintendent finds that in any calendar year commissions or other compensation earned with respect to such business exceeded, or probably would exceed, fifty percent of all commissions and compensation earned, or probably to be earned, in such calendar year as to all business written or likely to be written under the license during the same such year."

Chapter 289 Section 8

Section 8. Section 59A-12-10 NMSA 1978 (being Laws 1997, Chapter 48, Section 1) is amended to read:

"59A-12-10. LICENSING OF LENDING INSTITUTION--DEFINITIONS AND EXCEPTIONS.--

A. As used in this section:

(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business includes accepting deposits or lending money in New Mexico, including banks, savings and loan associations and credit unions; "lending institution" does not include insurance companies;

(2) "holding company", "subsidiary" and "affiliate" mean those terms as defined in regulations adopted by the superintendent, except "bank holding company" means that term as defined in Section 2 of the federal Bank Holding Company Act of 1956;

(3) "public utility" means a private employer subject to the jurisdiction of the commission that is engaged in the business of providing telecommunications, electric, gas, water or stream heat services to the public;

(4) "sell" means to engage in the solicitation, sale and placement of insurance and such other related activities conducted by an agent, solicitor or broker pursuant to the Insurance Code;

(5) "service contract" means a contract issued on consumer products pursuant to which the vendor or manufacturer bears the cost of the repair or replacement of the consumer product;

(6) "insurance premium finance agreement" means an agreement by which an insured or a prospective insured promises to pay to any person engaged in the business of premium financing, the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract; and

(7) "loan transaction" and any other reference to lending or extension of credit does not include loans made by broker-dealers registered in accordance with applicable state and federal securities laws that are wholly collateralized by securities.

B. A lending institution may be licensed to sell:

(1) any insurance except title insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(2) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this paragraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements; and

(7) travel accident or baggage insurance.

E. A lending institution shall not require as a condition precedent to the extension of credit, or any subsequent renewal thereof, or the procurement of other bank services that the customer purchase insurance through a particular insurer, agent, solicitor or broker.

F. A lending institution shall not extend credit, lease or sell property or furnish any other service or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance from that lending institution or from a particular insurer, agent, solicitor or broker.

G. A lending institution shall not impose a requirement on an insurance agent, solicitor or broker who is not associated with the lending institution that is not imposed on an insurance agent, solicitor or broker who is associated with that institution or, unless otherwise authorized by applicable federal or state law, require a debtor, insurer, agent, solicitor or broker to pay a separate charge in connection with the handling of insurance that is required under a contract.

H. A lending institution, except an institution that does not accept deposits that are federally insured, that sells insurance on its premises shall:

(1) conspicuously post a notice that is clearly visible to anyone who may purchase insurance that insurance is not a deposit account insured by a federal deposit insuring agency;

(2) orally inform a prospective purchaser of insurance that insurance is not a deposit account insured by a federal deposit insuring agency; and

(3) provide a written disclosure to the customer containing the following statements before the sale of insurance is complete:

(a) insurance is not a lending institution deposit account and is not insured by its federal deposit insuring agency;

(b) insurance is not an obligation of or guaranteed by the lending institution;

(c) the customer is not required to obtain insurance from a particular lending institution, agent, solicitor or broker; and

(d) where applicable, insurance involves investment risk, including potential loss of principal.

I. The sale of insurance by a lending institution, except an institution that does not accept deposits that are federally insured, shall be effectuated in such a manner so as to avoid confusion between federally insured deposit products offered by a lending institution and the nonfederally insured insurance sold. Insurance advertisements and other sales material shall be accurate and not misleading or deceptive. Insurance advertising and other sales materials regarding insurance shall include disclosures that contain language that is the same or substantially similar to the following:

(1) insurance is not a lending institution deposit and is not insured by its federal deposit insuring agency;

(2) insurance is not an obligation of or guaranteed by the lending institution; and

(3) where applicable, insurance involves investment risk, including potential loss of principal.

J. Insurance operations may be conducted by the lending institution, its holding company, an affiliate or subsidiary of either or through a separate corporate entity or partnership.

K. A lending institution shall not provide nonpublic customer information to a third party for the purpose of another's sale of insurance without written authorization from the customer. As used in this subsection, "nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution. "Nonpublic customer information" does not include customer names and addresses and telephone numbers or information about an individual that could be obtained from an unaffiliated credit bureau that is subject to the federal Fair Credit Reporting Act by a third party that is not entering into a credit relationship with the individual but has a legitimate need for the information in connection with a business transaction with the individual, except that "nonpublic customer information" includes information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims and insurance history of an individual. Notwithstanding any provision in this section to the contrary, compliance with Section 603 of the federal Fair Credit Reporting Act by a lending institution shall be deemed to be full compliance with this subsection. "Nonpublic customer information" does not include material excluded from the definition of "consumer report" by Section 603(d)(2)(A) of the federal Fair Credit Reporting Act.

L. Records relating to the insurance sales of a lending institution, including files relating to and reflecting customer complaints, shall be kept separate and apart from all records

relating to the banking transactions of the lending institution. Records pertaining to insurance activities of the lending institution or copies of those records shall be subject to the inspection and audit by the insurance division. If the division determines to inspect and audit the records relating to the insurance activities of a lending institution, that institution shall make available to the division, at a location in New Mexico the lending institution's records and knowledgeable personnel to assist in the interpretation of the lending institution's records.

M. A lending institution, or officer, director or employee acting on behalf of the institution, who qualifies for issuance of an agent's, solicitor's or broker's license pursuant to the Insurance Code may be issued an agent or broker license authorizing the sale of insurance.

N. A lending institution shall not pay a commission or other valuable consideration to a person for services of an insurance agent, solicitor or broker unless the person performing the service holds a valid insurance license for the class of insurance for which the service is rendered or performed at the time the service is performed. No person, other than a person properly licensed in accordance with the Insurance Code, shall accept any commission or valuable consideration for those services.

O. A lending institution shall not offer an inducement to a customer to purchase insurance from the institution other than as plainly expressed in the insurance policy. Investment programs, memberships or other programs designed or represented to waive, reduce, pay, produce or provide funds to pay all or part of the cost on insurance are an illegal inducement.

P. A lending institution may not in the same transaction solicit the purchase of insurance from a customer who has applied for a loan from the institution before the time the customer has received a written commitment from the lending institution with respect to that loan, or, in the event that no written commitment has been or will be issued in connection with the loan, a lending institution shall not solicit the purchase of insurance before the time the customer receives notification of approval of the loan by the lending institution and the institution creates a written record of the loan approval. This subsection shall not apply when a lending institution contacts a customer in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

Q. The sale of insurance by a lending institution, credit union, sales finance company, insurance company, insurance agent, an institution that grants or arranges consumer credit or an institution that solicits or makes loans in New Mexico may be conducted by a person whose responsibilities include loan transactions or other transactions involving the extension of credit so long as the person who is primarily responsible for making the specific loan or extension of credit is not the same person engaged in the sale of insurance for that same transaction; provided, however, that the provisions of this subsection shall not apply to:

(1) a broker or dealer registered under the federal Securities Exchange Act of 1934; or

(2) a lending institution location that has three or fewer persons with lending authority.

R. If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

S. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer, which may be evidenced by compliance with the federal Truth in Lending Act.

T. A person who engages in loan transactions at any office of, or on behalf of, a lending institution or any other agent, employee, director or officer of the lending institution may refer a customer who seeks to purchase, or seeks an opinion or advice on any insurance product, to a person, or may give the phone number of a person, who sells or provides opinions or advice on such products only if the customer expressly requests the referral; the person who engages in loan transactions does not solicit the customer request; and the person who engages in the loan transaction does not receive any compensation for the referral.

U. The location for the sale of insurance on the premises of a lending institution, except an institution that does not accept deposits that are federally insured, to the extent practicable shall be:

(1) physically located to be distinct from the lending activities of the institution; and

(2) clearly and conspicuously signed to be easily distinguishable by the public as separate and distinct from the lending activities of the institution.

V. Signs and other informational material concerning the availability of insurance products from the lending institution or third party soliciting the purchase of or selling insurance on the premises of the lending institution shall not be displayed to the extent practicable in an area where application for loans or other extensions of credit are being taken or closed.

W. Nothing in this section grants a lending institution, including its holding company, subsidiary or affiliate, except those enumerated in this section, the power to sell insurance that was not allowed prior to July 1, 1997.

X. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures.

Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section."

Chapter 289 Section 9

Section 9. Section 59A-12-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 213) is amended to read:

"59A-12-12. GENERAL QUALIFICATIONS FOR INDIVIDUAL AGENT, BROKER OR SOLICITOR LICENSE.--For the protection of the public in New Mexico, the superintendent shall not issue, continue or permit to exist a license to an individual as agent, broker or solicitor except as to an individual qualified as follows:

A. must be eighteen years of age or older;

B. must have passed any examination required for licensing;

C. must be competent, trustworthy and financially responsible;

D. if for license as an agent, must be appointed as an agent by an authorized insurer, subject to issuance of a license;

E. if for license as a solicitor, must be employed as a solicitor by a licensed agent, subject to issuance of the license; and

F. must be in compliance with other applicable qualifications and requirements of the Insurance Code."

Chapter 289 Section 10

Section 10. Section 59A-12-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 216) is amended to read:

"59A-12-15. LICENSING FIRMS, CORPORATIONS.--

A. The superintendent shall license a firm or corporation only as an agent or broker.

B. For license as agent each general partner and each individual to act for the firm, or each individual to act for the corporation, shall be named in the license or registered with the superintendent, and shall qualify as though for license as an individual."

Chapter 289 Section 11

Section 11. Section 59A-12-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 217) is amended to read:

"59A-12-16. EXAMINATION FOR LICENSE.--

A. Each applicant for license as agent, solicitor or broker or shall, prior to issuance of license, personally take and pass an examination authorized by the superintendent to establish the applicant's competence, knowledge and understanding of attendant responsibility and duties as to the insurance business to be transacted under the license applied for; except, that no such examination shall be required:

(1) for renewal or continuance of an existing license, except as provided in Subsection D of Section 59A-11-10 NMSA 1978;

(2) of an applicant for limited license as provided in Section 59A-12-18 NMSA 1978;

(3) of applicants with respect to life and health, or life or health, insurances who hold the chartered life underwriter (C.L.U.) designation by the American college of life underwriters;

(4) of applicants with respect to property, casualty, surety, marine and transportation, and vehicle insurances, or any of them, who hold the designation of chartered property and casualty underwriter (C.P.C.U.) designation by the American institute of property and casualty underwriters;

(5) of applicants for temporary license as provided for in Section 59A-12-19 NMSA 1978;

(6) of an applicant for a license covering the same kind or kinds of insurance as to which licensed in this state under a similar license within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(7) of an applicant for solicitor license who held license as agent in this state as to the same kind or kinds of insurance within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(8) of an applicant for broker or agent license, if the superintendent is satisfied that the applicant took and passed a similar examination in a state in which already licensed, subject to Section 59A-5-33 NMSA 1978; or

(9) of applicant for license only as title insurance agent.

B. The superintendent shall conduct examinations as provided for in Chapter 59A, Article 11 NMSA 1978."

Chapter 289 Section 12

Section 12. Section 59A-12-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 218) is amended to read:

"59A-12-17. SCOPE OF LICENSE.--

A. Except as to limited licenses identified in Section 59A-12-18 NMSA 1978, an agent's or broker's license shall cover the kind of insurance, or major subdivisions of life or health insurance, for which the applicant has applied and qualified, including of the following:

(1) life insurance, or any or all of the following subdivisions thereof:

(a) industrial life insurance;

(b) debit insurance;

(c) credit life insurance; or

(d) variable annuity contracts;

(2) health insurance, credit health insurance, or industrial health insurance, or other subdivisions thereof;

(3) property insurance;

(4) casualty insurance;

(5) surety insurance;

(6) marine and transportation insurance;

(7) vehicle insurance; or

(8) title insurance.

B. The scope of a solicitor's license is subject to Section 59A-12-14 NMSA 1978.

C. License of a broker shall cover the kind or kinds of insurance applied and qualified for, within the classifications stated in Subsection A of this section.

D. A licensee as to variable annuities or similar contracts deemed to constitute also securities, shall also possess license as a security salesman under other applicable state laws."

Chapter 289 Section 13

Section 13. Section 59A-12-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 221) is amended to read:

"59A-12-20. PLACE OF BUSINESS--DISPLAY OF LICENSE.--

A. Every general lines agent shall have and maintain a place of business accessible to the public, wherein the licensee conducts transactions under the license. The address of the place of business shall appear upon the application for license when issued, and the licensee shall promptly notify the superintendent in writing of any change of address. Nothing in this section shall prohibit maintenance of the place of business in the licensee's residence.

B. The licenses of the licensee and those of solicitors employed by him shall be conspicuously displayed in the place of business in a part customarily open to the public.

C. This section does not apply to life insurance, annuity contracts or health insurance."

Chapter 289 Section 14

Section 14. Section 59A-12-23 NMSA 1978 (being Laws 1984, Chapter 127, Section 224) is amended to read:

"59A-12-23. INSURANCE VENDING MACHINES.--

A. A licensed agent may solicit for and issue personal travel accident insurance policies of an authorized insurer by means of mechanical vending machines supervised by the agent and placed at airports and other places of convenience to the traveling public, if the superintendent finds that:

(1) the policy provides reasonable coverage and benefits, is suitable for sale and issuance by vending machine and use of such a machine in a proposed location would be of material convenience to the public;

(2) the type of machine proposed to be used is reasonably suitable for the purpose;

(3) reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;

(4) reasonable means are provided for refund of money inserted in defective machines and for which insurance so paid for is not received; and

(5) the cost of maintaining such a machine at a particular location is reasonable.

B. For each machine to be used the superintendent shall issue to the applicant a special vending machine license. The license shall state the name and address of the insurer and agent, name of the policy to be sold and serial number and operating location of the machine. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The superintendent shall also revoke

the license as to any machine as to which he finds that license qualifications no longer exist. Proof of existence of a subsisting license shall be displayed on or about each machine in use in such manner as the superintendent reasonably requires."

Chapter 289 Section 15

Section 15. Section 59A-12-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 225) is amended to read:

"59A-12-24. SHARING OF COMMISSIONS.--

A. An agent or broker shall share a commission or compensation for or on account of the solicitation or negotiation in this state of insurance on individuals or property or risks in this state only with the agent's duly licensed solicitor, or duly licensed agent of the insurer with which the insurance was placed, or duly licensed broker.

B. No such licensee shall share in commission or compensation as to a kind of insurance for which not licensed.

C. Such sharing in commissions and compensation between the same such licensees shall be infrequently only, and shall not unduly obviate the general necessity of appointment of the agent by the insurer with which the insurance is placed.

D. Nothing in the Insurance Code shall be deemed to prohibit payment, to or for the account of a former owner of an insurance agency or brokerage, of commissions or part thereof currently accruing on business of the agency or brokerage, as part of the purchase price of the agency or brokerage, whether or not such former owner is currently licensed as agent, solicitor or broker."

Chapter 289 Section 16

Section 16. Section 59A-12-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 226) is amended to read:

"59A-12-25. NONRESIDENT BROKERS, NONRESIDENT AGENTS AND NONRESIDENT SOLICITORS--RETALIATION.--

A. The superintendent may refuse to issue a license as a broker, agent or solicitor to a resident of another state or country, who is otherwise qualified under this article for license as a broker, agent or solicitor in New Mexico, if under the laws of the other state or country licensed residents of this state are prohibited or prevented from acting as broker, agent or solicitor because of their residence.

B. As part of an application for a license, the nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action

against or involving the licensee as to transactions under the license. The appointment shall be irrevocable and continue for so long as an action could arise or exist. Duplicate copies of process shall be served upon the superintendent or other individual in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the licensee at his last address of record with the superintendent. Process served and copy forwarded as so provided shall for all purposes constitute personal service upon the licensee.

C. The licensee shall likewise file with the superintendent written agreement to appear before the superintendent pursuant to notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the licensee at his last address of record with the superintendent, and that upon failure of the licensee to appear the licensee thereby consents to any subsequent suspension, revocation or refusal of the superintendent to continue the license."

Chapter 289 Section 17

Section 17. Section 59A-12-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 227, as amended) is amended to read:

"59A-12-26. CONTINUED EDUCATION.--

A. For protection of the public and to preserve and improve competence of licensees, the superintendent may in his sole discretion require as a condition to continuation of license as agent, solicitor or broker under this article that during the twelve months next preceding expiration of the current license period the licensee has attended the minimum number of hours of formal class instruction, lectures or seminars required and approved by the superintendent covering the kinds of insurance for which licensed.

B. Such instruction shall be designed to refresh the licensee's understanding of basic principles and coverages involved, recent and prospective changes therein, applicable laws and rules and regulations of the superintendent, proper conduct of the licensee's business and duties and responsibilities of the licensee.

C. The superintendent may permit licensees who because of remoteness of residence or business cannot with reasonable convenience attend such formal instruction sessions to take and successfully complete an equivalent course of study and instruction by mail.

D. The superintendent shall promulgate rules and regulations for effectuation of the purposes and requirements of this section and may impose a penalty not to exceed fifty dollars ($50.00) for a licensee's failure to timely report continuing education credits.

E. For the purposes of this section, the superintendent shall charge, at the time of certifying each licensee's continuing education credits as a condition of continuation of license, a fee of five dollars ($5.00).

F. This section shall not apply to holders of limited license issued under Section 59A-12-18 NMSA 1978."

Chapter 289 Section 18

Section 18. Section 59A-12A-14 NMSA 1978 (being Laws 1989, Chapter 374, Section 14) is amended to read:

"59A-12A-14. CONFIDENTIALITY.--

A. An administrator shall provide for the confidentiality of personal data identifying an individual covered by a plan or insurance carrier or data concerning a person that self insures. An administrator shall not disclose records containing personal information that may be associated with an identifiable individual covered by a plan or insurance carrier or data relating to a person that self insures to a person other than the individual to whom the information pertains, except as necessary to comply with the superintendent's inquiry or a court order. Other than to comply with the superintendent's inquiry or a court order, an administrator shall not disclose personal data without the prior consent of the covered individual or person that self insures.

B. Subsection A of this section does not apply to information disclosed for any of the following reasons or to an indicated entity:

(1) claims adjudication;

(2) claims verification;

(3) other proper plan or insurance carrier administration;

(4) an audit conducted pursuant to ERISA;

(5) an insurer or plan for the purchase of excess loss insurance and for claims under the excess loss insurance, provided, an insurer obtaining information under this paragraph shall be subject to the requirements of Subsection A of this section;

(6) the plan, insurance carrier, person that self insures or a fiduciary of the plan;

(7) the superintendent or the superintendent's designees; provided the information obtained by the superintendent under this subsection is confidential, except that the superintendent may use the information in any proceeding instituted against the administrator; or

(8) as required by law."

Chapter 289 Section 19

Section 19. Section 59A-12B-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 29) is amended to read:

"59A-12B-3. LICENSURE.--

A. No person, firm, association or corporation shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer authorized in this state unless such person is a licensed agent or broker in this state.

B. No person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as an agent or broker in this state pursuant to the provisions of the Managing General Agents Law.

C. The superintendent may require a bond in an amount acceptable to him for the protection of the insurer.

D. The superintendent may require the managing general agent to maintain an errors and omissions policy."

Chapter 289 Section 20

Section 20. Section 59A-12D-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 44) is amended to read:

"59A-12D-3. LICENSURE.--

A. No person, firm, association or corporation shall act as a reinsurance intermediary-broker in this state if it maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) in this state, unless such reinsurance intermediary-broker is a licensed producer in this state; or

(2) in another state, unless such reinsurance intermediary-broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a reinsurance intermediary.

B. No person, firm, association or corporation shall act as a reinsurance intermediary-manager:

(1) for a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(2) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(3) in another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a reinsurance intermediary.

C. The superintendent may require a reinsurance intermediary-manager subject to the provisions of Subsection B to:

(1) file a bond in an amount from an insurer acceptable to the superintendent for the protection of the reinsurer; and

(2) maintain an errors and omissions policy in an amount acceptable to the superintendent.

D.

(1) The superintendent may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of the Reinsurance Intermediary Law. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the superintendent as agent for service of process in the manner, and with the same legal effect, provided for by the Reinsurance Intermediary Law for designation of service of process upon unauthorized insurers; and also shall furnish the superintendent with the name and address of a resident of this state upon whom notices or orders of the superintendent or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the superintendent in writing of every change in its designated agent for service of process and such change shall not become effective until acknowledged by the superintendent.

E. The superintendent may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, anyone named on the application, or any member, principal,

officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license. Upon written request by the applicant, the superintendent will furnish a summary of the basis for refusal to issue a license, which document shall be subject to the provisions of Section 59A-11-20 NMSA 1978.

F. Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section."

Chapter 289 Section 21

Section 21. Section 59A-14-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 245) is amended to read:

"59A-14-7. SURPLUS LINE BROKER LICENSE REQUIRED--QUALIFICATIONS FOR LICENSE.--

A. No person shall in New Mexico be, act as or hold out to be, a surplus line 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 line 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 line 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 line 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 line broker;

(2) if 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 line broker, and an additional license fee shall be paid as to each individual, in excess of one, who is to exercise the surplus line broker license powers; and

(3) must file with the application the bond provided for in Section 59A-14-8 NMSA 1978.

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 289 Section 22

Section 22. Section 59A-16-13.1 NMSA 1978 (being Laws 1989, Chapter 304, Section 1) is amended to read:

"59A-16-13.1. CRANIOMANDIBULAR AND TEMPOROMANDIBULAR JOINT DISORDERS.--No insurer or other provider of health care benefits regulated under Articles 22, 23, 24A, 44, 46, 47 or 54 of the Insurance Code shall, after July 1, 1989, issue, deliver or execute in this state any policy, plan, contract or certificate of health, medical, hospitalization, accident or sickness coverage unless the policy, plan, contract, certificate or other evidence of coverage provides for surgical and nonsurgical treatment of temporomandibular joint disorders and craniomandibular disorders, subject to the same conditions, limitations, prior review and referral procedures as are applicable to treatment of any other joint in the body and treatable by any practitioner of the healing arts as defined in Section 59A-22-32 NMSA 1978. The health care coverage for craniomandibular and temporomandibular joint disorders required by this section may be subject to reasonable copayments or coinsurance provisions and need not include coverage for orthodontic appliances and treatment, crowns, bridges and dentures unless the disorder is trauma related."

Chapter 289 Section 23

Section 23. Section 59A-17-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 301) is amended to read:

"59A-17-5. ADMINISTRATION OF INSURANCE RATE REGULATORY LAW.--The provisions of Chapter 59A, Article 17 NMSA 1978 shall be administered by the superintendent."

Chapter 289 Section 24

Section 24. Section 59A-17-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 320) is amended to read:

"59A-17-25. JOINT UNDERWRITING OR JOINT REINSURANCE ORGANIZATIONS.--

A. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association or organization or by standing agreement among the members thereof, shall file with the superintendent:

(1) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;

(2) a list of its members; and

(3) the name and address of a resident of this state upon whom notices or orders of the superintendent or process affecting such group, association or organization may be served.

B. Every such group, association or other organization shall notify the superintendent promptly in writing of every change in its constitution, its articles of incorporation, agreement or association, in its bylaws, rules and regulations governing conduct of its business, its list of members, or of the name and address of its process agent referred to in Paragraph (3) of Subsection A of this section.

C. Every such group, association or organization shall be subject to regulation as herein provided, subject, however, as to joint underwriting to applicable provisions of Chapter 59A, Article 17 NMSA 1978, and as to joint reinsurance to Sections 59A-17-13, 59A-17-14, 59A-17-32, 59A-17-34 and 59A-17-35 NMSA 1978.

D. No such group, association or organization shall engage in any unfair or unreasonable practice with respect to its activities. If, after a hearing, the superintendent finds that any activity or practice of any such group, association or organization is unfair or unreasonable or otherwise inconsistent with the provisions of Chapter 59A, Article 17 NMSA 1978, he may issue his order specifying the respects in which the activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of that article, and requiring discontinuance of such activity or practice."

Chapter 289 Section 25

Section 25. 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 on such hearing 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."

Chapter 289 Section 26

Section 26. Section 59A-17-35 NMSA 1978 (being Laws 1984, Chapter 127, Section 330, as amended) is amended to read:

"59A-17-35. APPEALS FROM COMMISSION.--Any order made by the public regulation commission pursuant to Section 59A-17-34 NMSA 1978 shall be subject to review by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Upon institution of the appeal and for good cause shown upon motion and hearing, the court may, in the following cases, stay operation of the commission's order:

A. where, pursuant to Chapter 59A, Article 17 NMSA 1978, a rate service organization has been refused a license or an insurer has been refused a certificate of authority or had its license or certificate of authority suspended, it may, with leave of court, be allowed to continue to engage in business, subject to the provisions of that article, pending final disposition of its application for review; or

B. where any order of the commission shall provide for, or sustain the superintendent's order for, a change in any rate or rating system that results in an increase or decrease in rates, any insurer affected may, with leave of court pending final disposition of the proceedings in the district court, continue to charge rates that existed prior to such order, on condition that the difference in the rates be deposited in a special escrow or trust account with a reputable financial institution by the insurer affected, to be held in trust by such insurer and to be retained by the insurer or paid to the holders of policies issued after the order of the court, as the court may determine."

Chapter 289 Section 27

Section 27. Section 59A-30-14 NMSA 1978 (being Laws 1985, Chapter 28, Section 14) is amended to read:

"59A-30-14. OTHER PROVISIONS APPLICABLE.--To the extent not in conflict with the New Mexico Title Insurance Law, the following articles and provisions of the Insurance Code shall also apply to title insurers, title insurance agents and the business of title insurance:

Article 1. Scope of Code; Initial Definitions; General Penalty.

Article 2. Department of Insurance.

Article 4. Examinations, Hearings and Appeals.

Article 5. Authorization of Insurers and General Requirements.

Article 6. Fees and Taxes.

Article 7. Kinds of Insurance; Limits of Risk; Reinsurance.

Article 8. Assets and Liabilities.

Article 9. Investments.

Article 10. Administration of Deposits; Trusteed Assets of Alien Insurer.

Article 11. Licensing Procedures, Agents, Solicitors, Brokers, Adjusters and Others.

Article 12. Insurance Agents, Brokers and Solicitors.

Article 15. Unauthorized Insurers.

Article 16. Trade Practices and Frauds."

Chapter 289 Section 28

Section 28. Section 59A-35-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 601) is amended to read:

"59A-35-12. PERMIT AS INDUCEMENT.--

A. The granting of a securities permit is permissive only, and shall not constitute an endorsement or approval by the superintendent, public regulation commission or any other agency or department of the state of New Mexico of any person or thing related to the offering of securities, or constitute evidence of the completeness or accuracy of information presented in any prospectus or other sales publicity or literature, or a recommendation of purchase of any securities offered. The existence of the permit shall not be advertised or used as an inducement in any solicitation.

B. Each permit issued by the superintendent shall state conspicuously in boldface type the substance of Subsection A of this section in terminology prescribed by the superintendent."

Chapter 289 Section 29

Section 29. Section 59A-35-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 606, as amended) is amended to read:

"59A-35-17. QUALIFICATIONS, PROCEDURE FOR SECURITY SALESPERSON LICENSE.--

A. Applicants for license as securities salesperson shall be qualified as follows:

(1) be an individual not less than twenty-one years of age;

(2) be honest and trustworthy, of good personal and business reputation and financially responsible;

(3) take and pass an examination as given by the superintendent, reasonably testing the knowledge of the applicant of the securities to be sold, the responsibilities of a

salesperson relative thereto and competence of the applicant to act as a securities salesperson; and

(4) file with the superintendent along with application for license and thereafter maintain in force while so licensed, a surety bond issued by an authorized surety insurer or deposit of cash or cash-equivalent in lieu of the bond, in reasonable penal sum fixed by the superintendent but not less than ten thousand dollars ($10,000), for protection of the registrant, persons purchasing securities through the salesperson and the state of New Mexico and to assure compliance with law and the applicable regulations of the superintendent.

B. Procedure for application for license, examination of applicant, issuance, terms, duration and suspension or revocation of license and related matters shall be as provided by applicable provisions of Chapter 59A, Article 11 NMSA 1978. Fee for license and examination shall be as fixed in Section 59A-6-1 NMSA 1978.

C. This section shall not apply as to securities broker-dealers registered as such under the Securities Exchange Act of 1934, as amended, or as to securities the sale of which is underwritten (other than on a best efforts basis) by such a broker-dealer."

Chapter 289 Section 30

Section 30. Section 59A-37-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 617, as amended) is amended to read:

"59A-37-2. DEFINITIONS.--As used in Chapter 59A, Article 37 NMSA 1978:

A. "acquire" means to come into possession or control of, and "acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities or assets, bulk reinsurance and mergers;

B. "affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person;

C. "control" means the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership of voting securities, through licensing or franchise agreements, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by an individual. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds ten or more percent of the voting securities of any other person. This presumption may be rebutted by a showing, in the manner provided by Section 59A-37-19 NMSA 1978, that control does not in fact exist. The superintendent may determine, after furnishing all persons in interest notice and an opportunity to be heard, that control exists in fact, notwithstanding the absence of a

presumption to that effect, provided the determination is based on specific findings of fact in its support;

D. "insurance holding company" is a person that controls an insurer; "insurance holding company system" means a combination of two or more affiliated persons, at least one of which is an insurer;

E. "insurer" means a person that undertakes, under contract, to indemnify a person against loss, damage or liability arising from an unknown or contingent future event. The term does not include agencies, authorities or instrumentalities of the United States, its possessions or territories, the commonwealth of Puerto Rico, the District of Columbia, a state or any of its political subdivisions or a fraternal benefit society;

F. "person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities;

G. "securityholder" means the owner of any security of a person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing;

H. "subsidiary" means an affiliate of a person controlled by the person either directly or indirectly through one or more intermediaries;

I. "voting security" means a certificate evidencing the ownership or indebtedness of a person, to which is attached a right to vote on the management or policymaking of that person and includes any security convertible into or evidencing a right to acquire such a voting security; and

J. "health maintenance organization" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for co-payments or deductibles."

Chapter 289 Section 31

Section 31. Section 59A-40-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 692) is amended to read:

"59A-40-9. LICENSED AGENTS REQUIRED.--The insurer shall write business in New Mexico only through its resident United States agents duly appointed by it in writing and duly licensed by the superintendent under provisions of the Insurance Code applicable to insurance agents of authorized insurers. The appointment of agents shall specifically authorize the licensee to write for the Mexican insurer the insurance coverages as specified in Chapter 59A, Article 40 NMSA 1978."

Chapter 289 Section 32

Section 32. Section 59A-44-33 NMSA 1978 (being Laws 1989, Chapter 388, Section 33, as amended) is amended to read:

"59A-44-33. LICENSING OF AGENTS.--

A. Agents of societies shall be licensed in accordance with the applicable provisions of Chapter 59A, Articles 11 and 12 NMSA 1978 regulating the licensing, revocation, suspension or termination of license of agents, but shall not be subject to the provisions of Section 59A-12-26 NMSA 1978.

B. No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes or intends to devote fifty percent or more of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

C. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars ($50,000) or, in the case of any other kind of insurance that the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor shall be presumed to be devoting or intending to devote fifty percent of his time to the solicitation or procurement of insurance contracts for such society."

Chapter 289 Section 33

Section 33. Section 59A-44-41 NMSA 1978 (being Laws 1989, Chapter 388, Section 41) is amended to read:

"59A-44-41. APPLICABILITY OF INSURANCE CODE.--To the extent not in conflict with the express provisions of Chapter 59A, Article 44 NMSA 1978 and the reasonable implications thereof, the following provisions of the Insurance Code shall also apply as to fraternal benefit societies, and for such purpose a society may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Sections 59A-8-1 and 59A-8-2 NMSA 1978;

E. Section 59A-12-22 NMSA 1978;

F. Chapter 59A, Article 18 NMSA 1978;

G. Chapter 59A, Article 19 NMSA 1978;

H. Chapter 59A, Article 24A NMSA 1978;

I. Chapter 59A, Articles 20 and 22 NMSA 1978; and

J. Chapter 59A, Article 41 NMSA 1978."

Chapter 289 Section 34

Section 34. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29, as amended) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

(1) Chapter 59A, Article 1 NMSA 1978;

(2) Chapter 59A, Article 2 NMSA 1978;

(3) Chapter 59A, Article 4 NMSA 1978;

(4) Subsection C of Section 59A-5-22 NMSA 1978;

(5) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

(6) Chapter 59A, Article 8 NMSA 1978;

(7) Chapter 59A, Article 10 NMSA 1978;

(8) Section 59A-12-22 NMSA 1978;

(9) Chapter 59A, Article 16 NMSA 1978;

(10) Chapter 59A, Article 18 NMSA 1978;

(11) Chapter 59A, Article 19 NMSA 1978;

(12) Section 59A-22-2.1 NMSA 1978;

(13) Section 59A-22-14 NMSA 1978;

(14) Chapter 59A, Article 23B NMSA 1978;

(15) Sections 59A-34-2, 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-36, 59A-34-37, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;

(16) Chapter 59A, Article 37 NMSA 1978; and

(17) the Patient Protection Act.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules, regulations and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine."

Chapter 289 Section 35

Section 35. Section 59A-47-30 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.29) is amended to read:

"59A-47-30. LICENSED AGENTS OR SOLICITORS REQUIRED--QUALIFICATIONS, LICENSING PROCEDURES AND CONDITIONS.--

A. Solicitation of subscriberships for a health care plan shall be made only by agents of such plan or solicitors of such agents, who are duly qualified, appointed and licensed as such under the Insurance Code. This provision shall not apply as to salaried officers or employees of health care plans who are visiting or instructing their licensed agents, and who do not receive any part of the commission for any business written by such agents with their assistance.

B. No person shall be appointed or licensed as a health care plan agent or solicitor unless qualified therefor as follows:

(1) is an individual at least eighteen years of age;

(2) has had, or will receive, reasonable experience or instruction in the health care plan for which license is applied;

(3) is be trustworthy and of good business reputation;

(4) intends to engage in a bona fide way in the business of the health care plan; and

(5) passes to the superintendent's satisfaction an examination for license as given by or under authorization of the superintendent.

C. A health care plan agent shall be appointed by and at any one time represent only one such plan.

D. Subject to the other provisions of this section, procedures for appointment and licensing such agents and solicitors, examination, issuance or denial of license, continuation or expiration, suspension, revocation or refusal to continue license and other applicable matters relating to such licensing and licenses shall be as provided as to licenses of agents and solicitors as to health insurance under Chapter 59A, Article 11 NMSA 1978. Fee for application for license and continuation of license shall be as specified in Section 59A-6-1 NMSA 1978, and neither fee shall be refundable."

Chapter 289 Section 36

Section 36. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Subsection C of Section 59A-5-22 NMSA 1978;

E. Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

F. Section 59A-7-11 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

I. Section 59A-12-22 NMSA 1978;

J. Chapter 59A, Article 16 NMSA 1978;

K. Chapter 59A, Article 18 NMSA 1978;

L. Chapter 59A, Article 19 NMSA 1978;

M. Section 59A-22-2.1 NMSA 1978;

N. Subsections B through E of Section 59A-22-5 NMSA 1978;

O. Section 59A-22-14 NMSA 1978;

P. Section 59A-22-34.1 NMSA 1978;

Q. Section 59A-22-39 NMSA 1978;

R. Section 59A-22-40 NMSA 1978;

S. Section 59A-22-41 NMSA 1978;

T. Sections 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;

U. Chapter 59A, Article 37 NMSA 1978, except Section 59A-37-7 NMSA 1978;

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

W. the Patient Protection Act."

Chapter 289 Section 37

Section 37. Section 59A-50-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 919) is amended to read:

"59A-50-13. REGISTERED REPRESENTATIVES REQUIRED--QUALIFICATIONS FOR REGISTRATION.--

A. No person shall be, act as or purport to be a representative of a motor club in this state unless then registered as such with the superintendent by the motor club.

B. To qualify for registration the applicant shall:

(1) be an individual not less than eighteen years of age;

(2) be of good personal and business reputation;

(3) not previously have been refused registration or had registration revoked;

(4) be suitable and competent to act as such representative; and

(5) intend in good faith to act and hold himself out as such a representative.

C. As part of an application for registration, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident registrant. The appointment is irrevocable and continues for so long as an action involving the nonresident registrant could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the nonresident registrant at his last address of record with the superintendent. Process served and copy forwarded as so provided constitutes personal service upon the nonresident registrant.

D. A nonresident registrant shall also file with the superintendent a written agreement to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the nonresident registrant at his last address of record with the superintendent, and that upon failure of the nonresident registrant to appear, the nonresident registrant consents to subsequent suspension, revocation or refusal of the superintendent to continue the license."

Chapter 289 Section 38

Section 38. Section 59A-51-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 931) is amended to read:

"59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for license as bail bondsman or solicitor pursuant to the provisions of Chapter 59A, Article 51 NMSA 1978 must not be law enforcement, adjudication or prosecution officials or their employees, attorneys-at-law, officials authorized to admit to bail, or state or county officers, and must be qualified as follows:

A. is an individual not less than eighteen years of age;

B. is a citizen of the United States;

C. if for license as bondsman must take and pass to the superintendent's satisfaction a written examination testing his knowledge and competence to engage in the bail bondsman business;

D. is of good personal and business reputation;

E. if to act as a property bondsman, must be financially responsible and provide the surety bond or deposit in lieu thereof as required in accordance with Section 59A-51-8 NMSA 1978;

F. if to act as a limited surety agent, must be appointed by an authorized surety insurer, subject to issuance of a license, and meet all applicable qualifications as for licensing as an agent of an insurer as stated in Section 59A-12-12 NMSA 1978; and

G. if for license as a solicitor, must have been so appointed by a licensed bail bondsman subject to issuance of the solicitor license."

Chapter 289 Section 39

Section 39. Section 59A-51-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 932) is amended to read:

"59A-51-5. APPLICATION FOR LICENSE.--

A. An individual desiring to be licensed as bail bondsman or solicitor under Chapter 59A, Article 51 NMSA 1978 shall file with the superintendent written application on a form as prescribed and furnished by the superintendent, together with application for qualifying examination if for bail bondsman license.

B. With application for license to act as property bondsman the applicant shall file with the superintendent his detailed financial statement under oath and a schedule of charges and the rating plan proposed to be used in writing bail bonds. The schedule shall conform to rules and regulations promulgated by the superintendent.

C. Application for a solicitor's license must be endorsed by the appointing bail bondsman, who shall therein obligate himself to supervise the solicitor's activities in the bondsman's behalf.

D. The application shall be accompanied by a recent credential-sized full-face photograph of the applicant together with such additional proof of identity as the superintendent may reasonably require.

E. As part of an application for a license, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident licensee. The appointment is irrevocable and continues for so

long as an action involving the nonresident licensee could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the nonresident licensee at his last address of record with the superintendent. Process served and copy forward as so provided constitutes personal service upon the nonresident licensee.

F. A nonresident licensee shall also file with the superintendent a written agreement to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the nonresident licensee at his last address of record with the superintendent, and that upon failure of the nonresident licensee to appear, the nonresident licensee consents to subsequent suspension, revocation or refusal of the superintendent to continue the license."

Chapter 289 Section 40

Section 40. Section 59A-55-20 NMSA 1978 (being Laws 1988, Chapter 125, Section 20) is amended to read:

"59A-55-20. RESTRICTIONS ON INSURANCE PURCHASED BY PURCHASING GROUPS.--

A. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of the state.

B. A purchasing group may purchase insurance for its members in this state or covering its members' risks resident or located in this state only from insurers admitted in this state, from insurers that are eligible surplus lines insurers in this state or from risk retention groups that have registered in this state.

C. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of such group that have a risk resident or located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state and that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

D. No purchasing group may purchase insurance providing for a deductible or self-insured retention unless the deductible or self-insured retention is the sole responsibility of each individual member of the purchasing group."

Chapter 289 Section 41

Section 41. Section 59A-55-24 NMSA 1978 (being Laws 1988, Chapter 125, Section 24) is amended to read:

"59A-55-24. DUTY OF AGENTS OR BROKERS TO OBTAIN LICENSE.--

A. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in New Mexico from a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code.

B. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance:

(1) in New Mexico for a purchasing group from an authorized insurer or a risk retention group chartered in a state, unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code;

(2) in New Mexico for any members of a purchasing group under a purchasing group's policy, unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code; or

(3) from an insurer not authorized to do business in New Mexico on behalf of a purchasing group located in this state, unless such person, firm, association or corporation is licensed as a surplus lines agent or excess line broker pursuant to the provisions of the New Mexico Insurance Code.

C. Every person, firm, association or corporation licensed pursuant to the provisions of the New Mexico Insurance Code on business placed with risk retention groups or written through a purchasing group shall inform each prospective insured of the provisions of the notice required by Section 59A-55-10 NMSA 1978 in the case of a purchasing group."

Chapter 289 Section 42

Section 42. Section 59A-56-11 NMSA 1978 (being Laws 1994, Chapter 75, Section 11, as amended) is amended to read:

"59A-56-11. ASSESSMENTS.--

A. After the completion of each calendar year, the alliance shall assess all its members for the net reinsurance loss in the previous calendar year and for the net administrative loss that occurred in the previous calendar year, taking into account investment income for the period and other appropriate gains and losses using the following definitions:

(1) net reinsurance losses shall be the amount determined for the previous calendar year in accordance with Subsection A of Section 59A-56-9 NMSA 1978 for all members offering an approved health plan reduced by reinsurance premiums charged by the alliance in the previous calendar year. Net reinsurance losses shall be calculated separately for group and individual coverage. If the reinsurance premiums for either category of coverage exceed the amount calculated in accordance with Subsection A of Section 59A-56-9 NMSA 1978, the premiums shall be applied first to offset the net reinsurance losses incurred in the other category of coverage and second to offset administrative losses; and

(2) net administrative losses shall be the administrative expenses incurred by the alliance in the previous calendar year and projected for the current calendar year less the sum of administrative allowances received by the alliance, but in the event of an administrative gain, net administrative losses for the purpose of assessments shall be considered zero and the gain shall be carried forward to the administrative fund for the next calendar year as an additional allowance.

B. The assessment for each member shall be determined by multiplying the total losses of the alliance's operation, as defined in Subsection A of this section, by a fraction, the numerator of which is an amount equal to that member's total premiums, or the equivalent, exclusive of premiums received by the member for an approved health plan for health insurance written in the state during the preceding calendar year and the denominator of which equals the total premiums of all health insurance written in the state during the preceding calendar year exclusive of premiums for approved health plans; provided that total premiums shall not include payments by the secretary of human services pursuant to a contract issued under Section 1876 of the federal Social Security Act, total premiums exempted by the federal Employee Retirement Income Security Act of 1974 or federal government programs.

C. If assessments exceed actual reinsurance losses and administrative losses of the alliance, the excess shall be held at interest by the board to offset future losses.

D. To enable the board to properly determine the net reinsurance amount and its responsibility for reinsurance to each member:

(1) by April 15 of each year, each member offering an approved health plan shall submit a listing of all incurred claims for the previous year; and

(2) by April 15 of each year, each member shall submit a report that includes the total earned premiums received during the prior year less the total earned premiums exempted by federal government programs.

E. The alliance shall notify each member of the amount of its assessment due by May 15 of each year. The assessment shall be paid by the member by June 15 of each year.

F. The proportion of participation of each member in the alliance shall be determined annually by the board, based on annual statements filed by each member and other reports deemed necessary by the board. Any deficit incurred by the alliance shall be recouped by assessments apportioned among the members pursuant to the formula provided in Subsection B of this section; provided that thirty percent of the assessment paid for any member shall be allowed as a credit on the following annual premium tax return for that member.

G. The board may defer, in whole or in part, the payment of an assessment of a member if, in the opinion of the board, after approval of the superintendent, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. In the event payment of an assessment against a member is deferred, the amount deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of this section. The member receiving the deferment shall pay the assessment in full plus interest at the prevailing rate as determined by regulation of the superintendent within four years from the date payment is deferred. After four years but within five years of the date of the deferment, the board may sue to recover the amount of the deferred payment plus interest and costs. Board actions to recover deferred payments brought after five years of the date of deferment are barred. Any amount received shall be deducted from future assessments or reimbursed pro rata to the members paying the deferred assessment."

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 561, AS AMENDED

CHAPTER 290

RELATING TO EDUCATIONAL RETIREMENT; CHANGING CERTAIN PROVISIONS OF THE EDUCATIONAL RETIREMENT ACT PERTAINING TO MEMBERSHIP ELIGIBILITY OF CERTAIN TRANSFERRED EMPLOYEES; ENACTING A SECTION OF THE NMSA 1978.

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

Chapter 290 Section 1

Section 1. A new section of the Educational Retirement Act, Section 22-11-16.1 NMSA 1978, is enacted to read:

"22-11-16.1. REGULAR MEMBERSHIP CONTINUATION OF CERTAIN TRANSFERRED EMPLOYEES.--Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection B of Section 22-11-2 NMSA 1978, a regular member who is an employee of a local administrative unit that is a state educational institution named in Article 12, Section 11 of the constitution of New Mexico and who transfers to a general hospital or outpatient clinics of that hospital operated by the local administrative unit will have the

option to continue his regular membership rather than become a member of a retirement plan offered by the general hospital or outpatient clinics of that hospital. The option shall be exercised by filing a written election with both the educational retirement director and the designated officer of the local administrative unit. This election shall be made within sixty days after the effective date of the regular member's transfer and shall be irrevocable as long as the employee is employed by the general hospital or outpatient clinics of that hospital operated by the local administrative unit."

SENATE BILL 582, AS AMENDED

CHAPTER 291

RELATING TO EDUCATION; REQUIRING THE ESTABLISHMENT OF RULES AND PROCEDURES FOR A UNIFORM SYSTEM OF ACCOUNTING AND BUDGETING FOR PUBLIC SCHOOLS; ESTABLISHING SCHOOL DISTRICT TEMPORARY OPERATING BUDGETS AS FINAL OPERATING BUDGETS; DECLARING AN EMERGENCY.

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

Chapter 291 Section 1

Section 1. Section 22-8-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 59, as amended) is amended to read:

"22-8-5. RULES--PROCEDURES.--

A. The department shall establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The rules, including revisions or amendments, shall become effective only upon approval by the state board and the legislative finance committee and filing with the state records center and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the rules and procedures prescribed and shall, upon request, submit additional reports concerning finances to the department. In addition, upon request, all public schools and school districts shall file reports with the department containing 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.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the department shall timely

furnish information and data obtained from public schools and school districts pursuant to Subsection B of this section."

Chapter 291 Section 2

Section 2. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended by Laws 1993, Chapter 224, Section 2 and also by Laws 1993, Chapter 227, Section 9) is amended to read:

"22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the operating budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The operating budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. The operating budget required by this section shall include a proposed breakdown for charter schools in the school district, by individual charter school, of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the operating budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or with rules and procedures of the department."

Chapter 291 Section 3

Section 3. Section 22-8-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 61, as amended) is amended to read:

"22-8-7. BUDGETS--FORM.--All budgets submitted to the department by a school district shall be in a form specified by the department."

Chapter 291 Section 4

Section 4. Section 22-8-10 NMSA 1978 (being Laws 1967, Chapter 16, Section 65, as amended) is amended to read:

"22-8-10. BUDGETS--FIXING THE OPERATING BUDGET.--

A. Prior to June 20 of each year, each local school board shall, at a public hearing of which notice has been published by the local school board, fix the operating budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent or the local school board, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the operating budget for the school district, the local school board shall give notice to parents explaining the budget process and inviting parental involvement and input in that process prior to the date for the public hearing."

Chapter 291 Section 5

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 an operating budget for use by the local school board; and

(2) make corrections, revisions and amendments to the operating budgets fixed by the local school boards and the state superintendent to conform the budgets to the requirements of law and to the department's rules and procedures.

B. No school board or officer or employee of a school district 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 that fails to demonstrate that parental involvement in the budget process was solicited."

Chapter 291 Section 6

Section 6. Section 22-8-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 67, as amended) is amended to read:

"22-8-12. OPERATING BUDGETS--AMENDMENTS.--Operating budgets shall not be altered or amended after approval and certification by the department, except for the following purposes and according to the following procedure:

A. upon written request of any local school board, the state superintendent may authorize transfer within the budget, or provide for items not included, when the total amount of the budget will not be increased thereby;

B. upon written request of any local school board, the state superintendent, in conformance with the rules of the department, may authorize an increase in any budget if the increase is necessary because of the receipt of revenue that was not anticipated at the time the budget was fixed and if the increase is directly related to a special project or program for which the additional revenue was received. The state superintendent shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of any local school board, the state superintendent may authorize an increase in a budget of not more than one thousand dollars ($1,000); or

D. upon written request of any local school board, the state superintendent, after notice and a public hearing, may authorize an increase in a school budget in an amount exceeding one thousand dollars ($1,000). The notice of the hearing shall designate the school district which proposes to alter or amend its budget, together with the time, place and date of the hearing. The notice of the hearing shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the school district is situated. The last publication of the notice shall be at least three days prior to the date set for the hearing."

Chapter 291 Section 7

Section 7. Section 22-8-12.1 NMSA 1978 (being Laws 1978, Chapter 128, Section 5, as amended) is amended to read:

"22-8-12.1. MEMBERSHIP PROJECTIONS AND BUDGET REQUESTS.--

A. Each local school board shall submit annually, on or before October 15, to the department:

(1) an estimate for the succeeding fiscal year of:

(a) the membership of qualified students to be enrolled in the basic program;

(b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and

(c) the membership of students to be enrolled in approved special education programs;

(2) all other information necessary to calculate program costs; and

(3) any other information related to the financial needs of the school district as may be requested by the department.

B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the department's rules and procedures.

C. The department shall:

(1) review the financial needs of each school district for the succeeding fiscal year; and

(2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the state board for:

(a) amendments to the public school finance formula;

(b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and

(c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials."

Chapter 291 Section 8

Section 8. REPEAL.--Section 22-8-12.2 NMSA 1978 (being Laws 1978, Chapter 149, Section 1, as amended) is repealed.

Chapter 291 Section 9

Section 9. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 169

SIGNED April 8, 1999

CHAPTER 292

RELATING TO DENTISTRY; CHANGING THE LICENSING OF DENTISTS AND DENTAL HYGIENISTS BY CREDENTIAL; EXPANDING THE SCOPE OF PRACTICE OF DENTAL HYGIENISTS.

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

Chapter 292 Section 1

Section 1. Section 61-5A-4 NMSA 1978 (being Laws 1994, Chapter 55, Section 4) 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 his 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; or

(3) 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 any 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 roentgenograms; or

(j) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, "practice as a dental hygienist" means 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. "Dental hygiene" includes:

(1) prophylaxis, which is the treatment of human teeth by removing from their surface calcareous deposits and stain, removing accumulated accretions and polishing the surfaces of the teeth;

(2) removing diseased crevicular tissue;

(3) the application of pit and fissure sealants, fluorides and other topical therapeutic and preventive agents;

(4) exposing and referring to oral radiographs;

(5) screening to identify indications of oral abnormalities;

(6) preliminary assessment of periodontal conditions; and

(7) such other closely related services as permitted by the rules and regulations of the committee and the board.

C. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met such criteria as the committee shall establish and the board ratify may administer local anesthesia under indirect supervision of a dentist.

D. A dental hygienist may be certified for collaborative dental hygiene practice in accordance with the educational and experience criteria established collaboratively by the committee and board. The board may charge a fee not to exceed one hundred fifty dollars ($150) for each application for certification for collaborative dental hygiene practice.

E. For the purpose of this section, "collaborative practice of dental hygiene" means 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 jointly established by the board and the committee."

Chapter 292 Section 2

Section 2. Section 61-5A-12 NMSA 1978 (being Laws 1994, Chapter 55, Section 12) 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 diploma from an accredited dental college or school of dentistry of a university that is accredited by the American dental association commission on dental accreditation and 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 general dentistry licensure 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 regulations for the practice of dentistry in New Mexico. Written examinations shall be supplemented by the board or its agents administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice general dentistry. 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 shall issue a general dentistry 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 whose license is active and in good standing in that jurisdiction and in good standing in any other jurisdiction where the applicant has held a license; provided there are no proceedings pending against the applicant's license and that a standard national practitioner data bank or other nationally recognized data resource that records actions against a dentist within the United States does not reveal any activities that could reasonably be construed to constitute evidence of danger to patients. The applicant shall otherwise meet the requirements of the Dental Health Care Act, including payment of appropriate fees and passing an examination covering the laws and regulations of the practice of dentistry in New Mexico.

D. The board may issue a general dentistry license 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 American dental association 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 regulations 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 to an applicant who is duly licensed by examination as a dentist under the laws of another state or territory of the United States and 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 American dental association 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 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 292 Section 3

Section 3. Section 61-5A-13 NMSA 1978 (being Laws 1994, Chapter 55, Section 13) is amended to read:

"61-5A-13. DENTAL HYGIENIST LICENSURE.--

A. Applicants for licensure shall have graduated and received a diploma from an accredited dental hygiene educational program that provides a minimum of two academic years of dental hygiene curriculum and is a post-secondary educational institution accredited by the American dental association commission on dental accreditation and shall have passed the written portion of the dental hygiene examination administered by the joint commission on national dental examinations of the American dental association or, if this test is not available, another written examination determined by the committee.

B. Applicants for licensure by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a written examination

covering the laws and rules for practice in New Mexico. Each written examination shall be supplemented by a practical or clinical examination administered by the committee or its agents that reasonably tests the applicant's qualifications to practice as a dental hygienist. Upon an applicant passing the written and clinical examinations, the board, upon recommendation of the committee, shall issue a license to practice as a dental hygienist.

C. The board, upon the committee's recommendation, shall issue a license to practice as a dental hygienist by credentials without examination, including practical or clinical examination, to an applicant who is a duly licensed dental hygienist by examination under the laws of another state or territory of the United States and whose licence is in good standing in that jurisdiction and if the applicant otherwise meets all other requirements of the Dental Health Care Act, including payment of appropriate fees and passing an examination covering the laws and rules pertaining to practice as a dental hygienist in New Mexico."

HOUSE BILL 265, AS AMENDED

CHAPTER 293

RELATING TO EDUCATION; ESTABLISHING A PILOT PROGRAM FOR THE CREATION OF CHARTER SCHOOL DISTRICTS; ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 293 Section 1

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

"SHORT TITLE.--Sections 1 through 7 of this act may be referred to as the "Charter School District Act"."

Chapter 293 Section 2

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

"DEFINITION.--For the purpose of the Charter School District Act, "charter school district" means an existing school district operating under a charter that has been approved by the state board that is nonreligious, does not charge tuition and does not have admission requirements in addition to those found in the Public School Code."

Chapter 293 Section 3

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

"CHARTER SCHOOL DISTRICTS CREATED--DISTRICT RESPONSIBILITIES--EXEMPTIONS FROM THE PUBLIC SCHOOL CODE.--

A. Effective with the 1999-2000 school year, the state board shall initiate a pilot program to run from the commencement of the 1999 school year through June 30, 2005 to test the effectiveness of charter school districts. As part of this pilot program, the state board may approve not more than three school districts, large, medium and small, in the state to operate as charter school districts.

B. To be approved as a charter school district, a local school board shall submit an application to the state board. If the state board approves an application to operate as a charter school district, the local school district shall be exempt from provisions of the Public School Code pertaining to the length of the school day, staffing patterns, subject areas and instructional materials. A charter school district shall continue to:

(1) operate as a public, nonsectarian public school district;

(2) operate in the same geographic boundaries that existed prior to becoming a charter school district;

(3) receive state money as provided in the Public School Code;

(4) provide special education services as required by state and federal laws;

(5) be liable for timely payment on its bonded indebtedness and subject to the same bonded indebtedness limitations as it did before becoming a charter school district; and

(6) be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

C. A charter school district shall be accountable to the state board for purposes of ensuring compliance with its charter and applicable state law."

Chapter 293 Section 4

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

"CHARTER SCHOOL DISTRICT APPLICATION REQUIREMENTS--PROCESS--ELECTION.--

A. After a local school board applies for a charter to the state board and the state board approves the application, the board shall submit the question of whether to operate the school district as a charter school district to the qualified electors of the school district at any regular school board election or at any special election called for the purpose of voting on the question. A majority of those voting must vote in favor of the school district

becoming a charter school district. Any election called for this purpose shall be conducted pursuant to the School Election Law.

B. Not less than sixty-five percent of the employees of the school district must sign a petition in support of the school district becoming a charter district.

C. The state board shall establish by rule the application process and requirements for charter school district status.

D. The state board shall give priority consideration for charter school district status to those school districts that have received collaboration school improvement waivers or curriculum planning waivers.

E. Prior to approving an application for charter school district status, the state board shall require that the:

(1) proposed charter school district comply with all state board rules regarding accreditation;

(2) proposed charter school district comply with Sections 22-1-6 and 22-2-8 NMSA 1978; and

(3) charter school district application contain:

(a) a statement of mission and purpose for the operation of the district under a charter, including a statement of the district's goals and objectives;

(b) evidence that the charter is educationally sound and is in the best educational interests of the students;

(c) evidence that the plan is economically sound and complies with all state and federal laws and rules;

(d) an explanation of the relationship that will exist between the charter school district and its employees, and a description of the way the terms and conditions of employment will be addressed with affected employees; and

(e) waivers requested from the state board rules.

F. The governing body of the charter school district shall continue to be the local school board."

Chapter 293 Section 5

Section 5. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOL DISTRICTS--CONTRACT CONTENTS.--

A. An approved charter school district application shall constitute an agreement, and the terms of the agreement shall constitute a contract between the charter school district and the state board.

B. The contract between the charter school district and the state board shall reflect all agreements regarding the operation of the charter school district.

C. Employees of a charter school district shall be considered continuous employees without interruption of employment and continue to be subject to the requirements of the School Personnel Act and shall be afforded procedural due process rights and protections.

D. The terms of the contract may be revised at any time with the approval of both the state board and the charter school district."

Chapter 293 Section 6

Section 6. A new section of the Public School Code is enacted to read:

"CHARTER SCHOOL DISTRICTS--TERMS--RENEWAL OF CHARTER--GROUNDS FOR NONRENEWAL, PROBATION OR REVOCATION--APPEAL.--

A. A charter may be approved for a period not to exceed four academic calendar years.

B. The department of education shall provide by rule for ongoing review of the charter school district's compliance with accreditation.

C. Staff from the department of education shall visit each charter school district at least once each year to provide technical assistance and to determine the status of the district and the progress of the district toward the goals of its charter.

D. If during the ongoing review the department of education finds that the charter school district is not in compliance with the charter, the state board may revoke the charter or place the district on probationary status."

Chapter 293 Section 7

Section 7. A new section of the Public School Code is enacted to read:

"REPORT TO LEGISLATURE ON PILOT PROGRAM.--Not later than July 30, 2004, the state board and all charter school districts shall report to the legislature and the governor regarding the effectiveness of the pilot program established pursuant to the Charter School District Act."

HOUSE BILL 458, AS AMENDED

CHAPTER 294

RELATING TO PUBLIC UTILITIES; ESTABLISHING THE RESTRUCTURE OF THE ELECTRIC UTILITY INDUSTRY; PROVIDING FOR CUSTOMER CHOICE IN THE SUPPLY OF ELECTRICITY; PROVIDING OPTIONS TO RURAL ELECTRIC COOPERATIVES AND MUNICIPAL UTILITIES; CREATING A FUND; PROVIDING PENALTIES; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 294 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Electric Utility Industry Restructuring Act of 1999".

Chapter 294 Section 2

Section 2. FINDINGS AND PURPOSES.--

A. With respect to the Electric Utility Industry Restructuring Act of 1999, the legislature finds that:

(1) the generation and retail sale of electricity is becoming a competitive industry across the nation;

(2) retail electric customers in New Mexico should have the opportunity to benefit from competition in the electric generation markets and should have the choice to select their supplier of electricity;

(3) competition in the retail market for electricity is expected to provide long-term benefits for the economy of New Mexico, including the lowering of electricity prices, the creation of business opportunities, the improvement of energy efficiency and innovations in services and supply;

(4) to avoid burdening New Mexico streets, highways and landscapes with duplicate electric facilities, the transmission and distribution of electricity should remain subject to the regulation of the public regulation commission, with public utilities obligated to deliver electricity from electric suppliers to customers in areas served;

(5) it is necessary and appropriate to allow distribution cooperative utilities and municipal utilities to participate in the restructured market in ways that differ from rules applicable to other participants that are not customer owned;

(6) public utilities currently provide and will provide in the future products and services in addition to electric supply, transmission and distribution service. To the greatest extent possible, products and services are and should be available from nonregulated providers in the competitive marketplace, including from nonregulated public utility affiliates;

(7) the public interest requires the continued protection of retail customers through the licensing of electric suppliers, the provision of information to customers regarding electric service, service reliability and quality and the availability of service for all retail customers;

(8) residential and small business customers are least likely to benefit from the restructuring of the electric industry and need special protection to help ensure their participation in any benefits of competition;

(9) electric public utilities have undertaken long-term investments in facilities in order to provide sufficient and reliable service to the public. These actions may have created costs that will not be recoverable in a competitive market, and utilities should be permitted a reasonable opportunity to recover an appropriate amount of the costs incurred previously in providing electric service as well as costs that will be incurred in converting to the restructured scheme;

(10) protection of the state's environment and the promotion of renewable energy technologies are sensible endeavors that may be encouraged in the restructured electric industry; yet, after a reasonable period, assessment should be made to determine the usefulness, acceptability, benefits, including environmental and economic benefits, and the appropriateness of continuing financial promotion of renewable energy; and

(11) it is necessary to provide comprehensive implementing legislation to establish direction for all aspects of the restructuring of the electric utility industry in New Mexico.

B. The purposes of the Electric Utility Industry Restructuring Act of 1999 are to:

(1) provide a framework and time schedule for the restructuring of the electric industry to prepare for full competition in the energy supply and services segments of the electric industry;

(2) permit customer choice in the state on a phased basis to permit education of retail customers about choice and to permit utilities, suppliers and regulators to learn from their developing experiences in the competitive marketplace;

(3) state the policies of the legislature regarding the recovery of stranded costs and transition costs;

(4) ensure that when customer choice of electric supply is offered that adequate safeguards and procedures are in place to maintain safe and reliable electric service;

(5) ensure that residential and small business customers are not unduly harmed by restructuring;

(6) require that customer information about customer choice be appropriate and adequate to ensure informed decisions by the state's citizens;

(7) ensure that all retail customers continue to be offered electric service; and

(8) protect the financial integrity of public electric utilities during the transition to a competitive marketplace.

Chapter 294 Section 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or organized in another state and providing sales of electric power to member cooperatives in this state;

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

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

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

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

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

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

U. "regulated services" means bundled services prior to the date the involved class of service is granted customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999; and, only standard offer, distribution and transmission services after customer choice begins, pursuant to that act, and in any event, after January 1, 2002;

V. "renewable energy" means electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

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

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

Y. "standard offer service" means supply service acquired and delivered by a public utility after December 31, 2000 to residential and small business customers that are eligible for customer choice after that date but do not elect to acquire their power supplies from the retail competitive marketplace; and as to a distribution cooperative utility, means supply service acquired and delivered by the distribution cooperative utility to residential and small business customers that either do not elect to acquire their supply service from a competitive power supplier or are not eligible to make such election pursuant to the terms of the Electric Utility Industry Restructuring Act of 1999;

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

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

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

Regulated revenue requirements include all regulatory assets, net liabilities, deferred taxes, costs associated with construction, operation and decommissioning or removal from service of generation facilities, costs associated with purchased power, water and fuel contracts, lease and lease-related costs, gains or benefits to which ratepayers are entitled and all other accounting categories of costs and credits, including credit for taxes already recovered by the utility, recognized under cost-of-service regulation and attributable to the generation function of each utility. "Stranded costs" shall not include costs that are unreasonable, imprudent or mitigable or that have been determined to not be recoverable in rates. "Stranded costs" shall be calculated for the period ending when the useful lives for all generation assets or obligations of the particular utility existing on the effective date of the Electric Utility Industry Restructuring Act of 1999 are anticipated to expire. Retiring assets are presumed to be replaced at market prices;

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

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

CC. "transition costs" means those prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and regulations promulgated thereunder relating to the transition to open access, and the prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. "Transition costs" shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999;

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

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

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

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

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

Chapter 294 Section 4

Section 4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR PLANS AND APPROVALS--REVIEW BY COMMISSION.--

A. Except as provided in Sections 16 and 17 of the Electric Utility Industry Restructuring Act of 1999, customer choice service shall be available as follows:

(1) for public post-secondary educational institutions and public schools, as defined in Section 22-1-2 NMSA 1978, and for residential and small business customers on January 1, 2001; and

(2) for all other customers of electricity, on January 1, 2002.

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

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

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

Chapter 294 Section 5

Section 5. DELIVERY OF ELECTRIC SUPPLY.--A public utility or its successor in interest that provides electric service to a customer or a customer location before customer choice becomes available for that customer as provided in Section 4 of the Electric Utility Industry Restructuring Act of 1999 shall continue to provide distribution

service or transmission service on a non-discriminatory basis to or for that customer or customer location.

Chapter 294 Section 6

Section 6. TRANSITION PLANS.--

A. A public utility shall file a transition plan that complies with the Electric Utility Industry Restructuring Act of 1999 with the commission no later than March 1, 2000 for commission approval on or before December 1, 2000. The transition plan shall include a detailed description of the public utility's:

(1) proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 8 of the Electric Utility Industry Restructuring Act of 1999;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) is in the public interest;

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

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

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

C. The commission in quantifying stranded costs shall consider:

(1) mitigation efforts and results;

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

(a) the use of standard offer bid prices;

(b) appraisal by independent third-party professionals;

(c) a competitive bid sale for generation; and

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

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

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

D. Before July 1, 2000, the commission shall approve the procurement procedure proposed by the public utility in its transition plan for the acquisition of supply service for standard offer service. On or before September 1, 2000, a public utility shall update its

pending transition plan filing by providing the price of supply service procured for standard offer service pursuant to the procurement procedure approved by the commission. The approval of stranded costs to be recovered from the residential and small business classes shall be made after the public utility has contracted to procure power for the standard offer, but prior to December 1, 2000.

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

Chapter 294 Section 7

Section 7. RECOVERY OF TRANSITION AND STRANDED COSTS--OPPORTUNITIES AND LIMITS.--

A. The commission shall determine the non-bypassable wires charges for the recovery of transition costs and stranded costs as described in Section 6 of the Electric Utility Industry Restructuring Act of 1999.

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

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

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

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

C. In its approval of a transition plan provided for in Section 6 of the Electric Utility Industry Restructuring Act of 1999, the commission shall determine a non-bypassable wires charge for recovery of transition costs through December 31, 2007, after which date further transition charges shall not be recoverable through a separate wires charge.

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

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

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

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

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

Chapter 294 Section 8

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

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

B. Before January 1, 2001, a public utility shall separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis.

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

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

(1) prevent undue discrimination in favor of affiliates;

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

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

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

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

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

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

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

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

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

(2) describe the safeguards instituted to prevent the sharing with an affiliate of employees, goods, services or facilities, except that common costs for essential corporate-wide services shall be allocated between the public utility and affiliates to reflect the proportional benefit that the public utility receives from those services compared to the affiliates receiving the services, and provided that a public utility may purchase goods, services or facilities from an affiliate if the items cannot be provided internally or obtained from an independent person at an equal or lower price or other

factors such as quality or service that justify a higher purchase price. The commission may promulgate rules regarding the transfer of employees, provided that the commission shall not require or approve a policy or procedure that interferes with an employee's ability to apply for and be considered for a position of his choice.

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

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

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

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

J. Public utilities that provide both electricity and natural gas distribution services shall not be required to functionally separate their electric and gas transmission, transportation and distribution operations from each other, and any rule or order to the contrary is void and to no force and effect; and provided that any regulated natural gas distribution operations operated within the same legal entity as regulated electric operations shall be subject to Subsections E and G of this section; and provided further that nothing in this section shall prevent a combined gas and electric distribution company from selling the natural gas commodity to customers pursuant to tariffs approved by the commission.

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

Chapter 294 Section 9

Section 9. COMPETITIVE POWER SUPPLIERS--LICENSE APPLICATION AND REVOCATION.--

A. A competitive power supplier shall file an application with, and obtain a license from, the commission before offering competitive services for sale to customers in the state.

B. Prior to receiving a license in the state, a competitive power supplier shall file a report with the commission, with information and in a form prescribed by the commission, disclosing activities and operations and those of any affiliate related to its supply service in this state.

C. Any person applying for a competitive power supplier license shall:

(1) disclose its name, owners, business addresses and telephone numbers in the state, and if a corporation, its directors and officers;

(2) execute, by a person authorized to do so, an affidavit authorizing or reflecting the authorization of the competitive power supplier to a statutory agent of the competitive power supplier to accept service of process in the state, accompanied by an acceptance of such designation by the statutory agent;

(3) execute, by a person authorized to do so, an agreement to compensate the state for any applicable taxes for sales to customers in the state;

(4) execute, by a person authorized to do so, an agreement that all electricity sold to a customer in the state shall be delivered to that customer;

(5) provide proof of financial integrity and a demonstration of adequate supply with reserve margins or the ability to obtain adequate reserve margins;

(6) post a bond, the financial security equivalent of a bond or other adequate financial assurances acceptable to the commission to cover system costs in the event the licensee fails to provide supply service in accordance with its obligations;

(7) execute, by a person authorized to do so, an agreement to comply with and be bound by the rules promulgated by the commission applicable to competitive power suppliers and supply service in the state;

(8) demonstrate capability to meet all obligations undertaken or assumed, for and on behalf of its customer**s**, so that supply service is available, reliable and deliverable on a real-time basis;

(9) execute, by a person authorized to do so, an agreement to produce documents or other records to support any filings, reports or agreements required by the commission

and to support any representations made to the commission or customers if required to do so by the commission;

(10) execute, by a person authorized to do so, an agreement to compensate a distribution or transmission company that provides open access for delivery of supply service to a customer of the competitive power supplier for shortfalls in supply service pursuant to rules promulgated by the commission; and

(11) submit a proposal for renewable energy supply service options to customers.

D. An application for a license is deemed approved within forty-five days of its filing with the commission, unless the commission, in its discretion, extends the approval period for thirty days or rejects the application before it is deemed approved. If rejected, the commission shall state its reasons for the rejection and may identify corrective measures to overcome the deficiencies causing the rejection.

E. Thirty days before offering any sales of competitive services in the state, a competitive power supplier shall:

(1) provide all public utilities with copies of its application and license; and

(2) publish a copy of its license in a newspaper of general circulation in each county of the state in which it intends to offer competitive service.

F. The commission shall promulgate rules governing competitive electric suppliers for the protection of customers, including:

(1) required disclosures to a potential customer of unbundled prices, generation sources and fuel mix, associated emissions, gross receipts taxes, franchise fees and any other charges;

(2) fair and reasonable marketing and sales practices, including truthful advertising and disclosure practices; and

(3) an expeditious procedure before the commission to resolve a dispute between a customer and a competitive power supplier regarding compliance with commission rules applicable to competitive power suppliers.

G. After a hearing initiated on the commission's own investigation or upon the complaint of an affected party, the commission may revoke or suspend the license of or impose a penalty on a competitive power supplier, or both, if it is established that just cause for the revocation, suspension or penalty imposition exists because the competitive power supplier:

(1) knowingly provided false information to the commission;

(2) switched or caused to be switched the supply service of a customer without first obtaining the customer's informed written permission;

(3) failed to provide reasonably adequate supply service for its customers in the state;

(4) committed fraud or knowingly engaged in an unfair or deceptive trade practice;

(5) is a delinquent taxpayer as to any New Mexico tax;

(6) engaged in anti-competitive conduct; or

(7) violated any other law or commission rule or order.

H. Any person selling or offering to sell competitive services in this state in violation of any provision of the Electric Utility Industry Restructuring Act of 1999 is subject to license revocation or suspension in addition to any administrative, civil or criminal fines or penalties imposed pursuant to that act or pursuant to other law. Nothing in that act shall be construed to limit a person's rights pursuant to the Unfair Practices Act or to require exhaustion of remedies before bringing an action pursuant to that act.

Chapter 294 Section 10

Section 10. DISTRIBUTION SERVICE--STANDARD OFFER SERVICES.--

A. Distribution service is subject to the jurisdiction and authority of the commission.

B. Each public utility providing distribution service shall:

(1) file and maintain tariffs providing rates and service conditions for distribution service available to competitive power suppliers, transmission companies and customers on a non-discriminatory basis;

(2) plan, build and maintain distribution facilities or ensure that facilities are planned, built and maintained;

(3) prudently acquire and deliver standard offer service in accordance with the transition plan filed and approved in accordance with Section 6 of the Electric Utility Industry Restructuring Act of 1999;

(4) at the discretion and direction of the commission, prudently arrange for back-up and emergency supply service; and

(5) provide billing and metering services and other ancillary services as approved by the commission to customers and competitive power suppliers pursuant to commission-regulated prices, terms and conditions of service.

C. Standard offer service is subject to the jurisdiction and authority of the commission.

Chapter 294 Section 11

Section 11. TRANSMISSION SERVICE.--

A. Transmission service is subject to the jurisdiction and authority of the commission and shall be provided in a non-discriminatory manner pursuant to transmission service tariffs approved by the commission to the extent permitted by federal law or the federal energy regulatory commission.

B. If transmission service is not operated in a manner that the commission determines to be in the public interest, the commission shall take all necessary actions within its jurisdiction to ensure that reliable and non-discriminatory transmission service is provided to and for customers.

Chapter 294 Section 12

Section 12. CUSTOMER EDUCATION AND PROTECTIONS.--

A. The commission shall conduct customer education efforts necessary to enable customers to make informed decisions about customer choice. The commission may require the inclusion of educational materials in bills or other mailings regularly made to service customers by a public utility.

B. It is unlawful pursuant to the Electric Utility Industry Restructuring Act of 1999 for any person to:

(1) change, direct another person to change or participate in processing a change in a customer's supply service provider without the customer's authorization; or

(2) charge, direct another person to charge or participate in processing a charge for any product or service through a customer's public utility bill for any unregulated service without the customer's authorization.

C. A person may file a complaint regarding a violation of Subsection B of this section with the commission. Complaints shall be placed at the head of the docket and shall be resolved expeditiously. Any person found to have violated any provision of Subsection B of this section shall be subject to imposition of fines in accordance with the Electric Utility Industry Restructuring Act of 1999 and to appropriate cease and desist orders. The commission may award attorney fees and costs to prevailing parties.

D. The commission shall not permit an action or transaction that results or could result in a violation of Subsection B of this section.

E. As used in this section, "authorization" means a letter of agency separate from any sales or solicitation material that contains, in clear and conspicuous language, a full and complete description of the change in supply service provider, and any product or service to be charged to the customer's bill. The letter of agency shall contain, in clear and conspicuous language, a full and complete description of the rates, fees and charges associated with the new supply service provider and the product or service to be charged to the bill. The letter of agency shall be signed by the customer before any change may be made in a customer's supply service provider, or any charge for any unregulated product or service may be placed on a customer's bill.

F. Any customer authorization that does not comply with the requirements of this section shall be void and without effect.

G. No person shall use any sweepstakes, contest or drawing of any kind to obtain a customer's authorization to change a customer's supply service provider or to charge for any product or service on a customer's bill.

H. The commission may adopt rules as necessary to provide further customer protections.

Chapter 294 Section 13

Section 13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system benefits charge" in the amount of three hundredths of one cent ($.0003) per kilowatt-hour is created and imposed on all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities beginning January 1, 2002. On January 1, 2007, the system benefits charge shall increase to six-hundredths of one cent ($.0006) per kilowatt-hour. The commission shall eliminate any portion of the system benefits charge that is not being used for the purposes specified in Section 15 of the Electric Utility Industry Restructuring Act of 1999. The system benefits charge shall be separately identified on bills rendered to customers beginning on January 1, 2002.

Chapter 294 Section 14

Section 14. WIRES CHARGES--COLLECTION--ACCOUNTING--PREPAYMENT.--

A. Wires charges assessed on a per kilowatt-hour basis for stranded costs, transition costs and the system benefits charge shall be paid by each customer to the public utility, and as to the system benefits charge only to the distribution cooperative utility or a municipal utility. Revenues collected as the system benefits charge shall be paid to the electric industry system benefits fund and distributed in accordance with the provisions of Section 15 of the Electric Utility Industry Restructuring Act of 1999.

B. Notwithstanding any other provision of the Electric Utility Industry Restructuring Act of 1999 and subject to the requirements of this subsection, a customer of a public utility shall be allowed to pay a fee equal to the net present value of stranded cost charges to

be assessed to that customer. Any prepayment of stranded costs must be completed prior to the date of customer choice for that customer and shall take into account expected growth for that customer based upon historical usage. Disputes as to the amount of the payment required pursuant to this subsection shall be presented to the commission no later than ninety days prior to the applicable customer choice date and shall be resolved by the commission thirty days prior to that date. Prepayment of stranded costs shall be for the benefit of the service location for which the payment is determined and shall not transfer with a customer to a different or additional service location.

Chapter 294 Section 15

Section 15. ELECTRIC INDUSTRY SYSTEM BENEFITS FUND CREATED--SUPPORT FOR ADMINISTRATION AND CUSTOMER INFORMATION, LOW-INCOME CUSTOMERS AND RENEWABLE TECHNOLOGY.--

A. The "electric industry system benefits fund" is created and consists of money collected as a wires charge assessed on a three-hundredths-of-one-cent ($.0003) per kilowatt-hour basis as the system benefits charge collected monthly and paid quarterly to the department of environment. No other money shall be deposited or paid in the electric industry system benefits fund. Interest or other earnings from investment or deposit of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall be transferred to the general fund.

B. Money in the electric industry system benefits fund is appropriated to the department of environment solely for the purpose of disbursing money to authorized recipients for authorized purposes as described in Subsection D of this section. Disbursements from the fund shall be made upon certification by the secretary of environment that the disbursement is for a payment authorized by Section 15 of the Electric Utility Industry Restructuring Act of 1999.

C. The department shall promulgate rules establishing the application procedure and required qualifications of projects, including a person or business that may attempt to participate, contract or join with an authorized recipient in applying for a disbursement from the fund. The department may periodically accept applications for disbursement from the fund and shall prioritize the acceptable applications considering:

(1) the contribution the project offers to the knowledge of and potential commercialization of the renewable energy;

(2) the geographic area of the state in which the project is to be conducted in relation to other projects;

(3) the cost of the project and the relative contribution of the disbursement sought from the fund to the total cost of the project; and

(4) in the case of a project of a school district, the number and involvement of students in the project.

D. The department shall manage, administer and maintain the fund in the following manner and for the following purposes:

(1) no more than one hundred thousand dollars ($100,000) annually to the department for administration of the fund;

(2) five hundred thousand dollars ($500,000) annually to the commission for consumer education and information, and for administration of the Electric Utility Industry Restructuring Act of 1999;

(3) no less than five hundred thousand dollars ($500,000) annually for low-income energy assistance through the federal low-income housing energy assistance project to be expended for that project's weatherization program administered by the New Mexico mortgage finance authority or for other low-income energy assistance authorized and administered by the state;

(4) no more than four million dollars ($4,000,000) annually to encourage the use of renewable energy through the initiation, development and evaluation of renewable technology projects authorized and directed by public post-secondary educational institutions or a school district in conjunction with the education of its students or by the governing body of an incorporated city, town or village or a county, each in conjunction with the respective governing body's interest in protecting the environment and reducing the city's or county's utility costs; and

(5) no more than four million dollars ($4,000,000) to the governing body of a community or Indian nation, tribe or pueblo, where limited or no electric service is available, to develop electric service through the initiation and implementation of new projects, including those using renewable energy, to provide or extend electric service in low-income communities.

E. The department shall submit to the legislative finance committee prior to each regular legislative session a report on disbursements made from the fund to include, at a minimum:

(1) a list of recipients receiving disbursements;

(2) the amount of each disbursement;

(3) the date of each disbursement;

(4) a description of each project or expansion funded with a disbursement;

(5) a description of each project's contribution to the state's knowledge and use of renewable energy and developing technologies; and

(6) a description of the expansion of electric service in the state.

Chapter 294 Section 16

Section 16. DISTRIBUTION COOPERATIVE UTILITIES.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on the effective date of the Electric Utility Industry Restructuring Act of 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where organized. The commission shall approve the application if the distribution cooperative utility:

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

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

H. On or before January 1, 2002, a distribution cooperative utility shall elect through its board of trustees a business method of providing supply service to its service customers from the options described in Subsection I of this section. The chosen business method may be implemented over a three-year period or less, after commission approval. The distribution cooperative utility shall not:

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

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

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

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

(a) shall acquire and provide supply service;

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

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

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

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

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

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

J. A distribution cooperative utility may set a reasonable exit fee or a non-bypassable non-discriminatory charge to recover costs, liabilities and investments that would have

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

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

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

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

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

Chapter 294 Section 17

Section 17. MUNICIPAL UTILITIES.--

A. This section governs municipal utilities in relation to the Electric Utility Industry Restructuring Act of 1999. Except as provided in Subsection E of this section, a municipal utility is neither a public utility, a distribution company nor a transmission company pursuant to the Electric Utility Industry Restructuring Act of 1999.

B. Except for a municipality authorized to condemn facilities pursuant to Subsections E and F of Section 3-24-1 NMSA 1978, which is deemed to have chosen to participate in customer choice for its service customers effective January 1, 2002, a municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access for competitive services to its service customers. A municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access to offer supply service and competitive services to customers in addition to its service customers. A decision by a municipal governing body to participate in customer choice and open access for its service customers only or its service customers and other customers at any time after January 1, 2002 shall be made by the adoption of an appropriate ordinance or resolution, which decision once made is thereafter irrevocable. A municipal utility may not participate in customer choice or open access for customers other than its service customers unless and until its service customers are eligible for customer choice with open access available to fulfill a customer's choice of supply service.

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

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

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

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

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

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

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

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

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

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

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

Chapter 294 Section 18

Section 18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX REVENUES ANALYSIS.--

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

B. Any gross receipts taxes collected on electric service received by retail customers in the state shall be stated as a separate line entry on a bill for electric service sent to the customer by a public utility or distribution cooperative utility.

C. The New Mexico legislative council shall annually through January 1, 2002, refer to the revenue stabilization and tax policy committee questions and issues related to the amount of state and local tax revenues derived from previously regulated electric utility service and property and report to the legislature annually on the changed impact to state and local government tax revenues resulting from restructuring and competition in the electric industry.

D. On or before January 1, 2003, the revenue stabilization and tax policy committee shall recommend legislative changes, if any, to establish comparable state and local taxation burdens on all market participants in the supply of electricity considering the impacts and changes that have resulted from the restructure and competition in the electric industry in the state.

Chapter 294 Section 19

Section 19. COMMISSION EXAMINATIONS.--

A. To ensure an orderly and equitable restructuring of the electric utility industry in this state and to achieve the purposes outlined in Section 2 of the Electric Utility Industry Restructuring Act of 1999, the legislature hereby directs the commission to further examine:

(1) standard offer;

(2) consumer education and protection;

(3) safety, reliability, quality and performance standards for competitive power suppliers and distribution and transmission facilities;

(4) the presence of market power, its impacts on the restructure of the electric industry and methods available to limit or eliminate its adverse impacts;

(5) alternative operations and regulations, including an independent system operator;

(6) regional transmission and governance efforts, both public and private, and the advisability of regional cooperation by the state;

(7) emergency and back-up service;

(8) the advisability and desirability of requiring renewable energy portfolio standards in supply service offered to customers in the state; and

(9) how power may be procured from on-site generation facilities, including facilitating net metering.

B. The commission shall report on its examinations to the legislature by December 1 of each of the three years following the effective date of the Electric Utility Industry Restructuring Act of 1999 and thereafter as necessary and provide its recommendations for further legislative changes or direction.

Chapter 294 Section 20

Section 20. RULEMAKING.--The commission is authorized to promulgate rules necessary to implement its authority and the directives granted in the Electric Utility Industry Restructuring Act of 1999.

Chapter 294 Section 21

Section 21. ADMINISTRATIVE FINES.--

A. The commission may impose an administrative fine on any person subject to regulation or licensure pursuant to the Electric Utility Industry Restructuring Act of 1999 for any act or omission that the person knew or should have known was a violation of any provision of that act or rule or order of the commission.

B. An administrative fine of not less than one hundred dollars ($100) nor more than two million dollars ($2,000,000) may be imposed for each violation. Each day of a continuing violation shall be considered a separate violation.

C. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the person that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section, and that the person has an opportunity for a hearing.

D. The commission may initiate a proceeding to impose an administrative fine within two years from the date of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation pursuant the Electric Utility Industry Restructuring Act of 1999 for any period during which the person has intentionally concealed the violation.

E. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine to impose. The amount of the fine shall bear a reasonable relationship to the nature and severity of the violation.

F. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a person shall be deemed the act or omission of that person unless that person has a clear and actively enforced policy prohibiting such acts or omissions.

G. The commission shall issue rules as may be necessary to implement this section.

Chapter 294 Section 22

Section 22. COMMISSION REVIEW AND RECOMMENDATIONS.--The commission shall docket a proceeding to review the system benefits charge and the system benefits fund, their operation and effectiveness, and then to make recommendations to the legislature by January 10, 2004 for any repeal of or changes to these provisions.

Chapter 294 Section 23

Section 23. CONFLICTING PROVISIONS.--The provisions of the Electric Utility Industry Restructuring Act of 1999 shall supersede any conflicting provision of the Public Utility Act.

Chapter 294 Section 24

Section 24. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SENATE BILL 428, AS AMENDED

SIGNED April 8, 1999

CHAPTER 295

RELATING TO TELECOMMUNICATIONS; MAKING CHANGES TO THE OPERATION OF RURAL TELECOMMUNICATIONS CARRIERS IN NEW MEXICO; ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 295 Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Rural Telecommunications Act of New Mexico".

Chapter 295 Section 2

Section 2. PURPOSE.--The legislature declares that it remains the policy of the state of New Mexico to maintain for rural customers availability of access to telecommunications services at affordable rates. Furthermore, it is the policy of this state to have comparable long distance service rates, as established by the commission, for comparable markets or market areas. To the extent that it is consistent with maintaining availability of access to service at affordable rates for rural customers, it is further the policy of this state to encourage competition and reduce regulation in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of the Rural Telecommunications Act of New Mexico to permit a regulatory framework that will allow an orderly transition for rural telephone carriers from a regulated telecommunications industry to a competitive market environment consistent with the federal act. Further, the legislature finds that as part of such regulatory framework, it is necessary to provide disparate regulatory treatment between rural telephone carriers and non-rural telephone carriers in order to assist with accomplishing the goals established by the above declared policies. Disparate regulatory treatment is particularly necessary for those citizens who reside in rural New Mexico, because those rural areas constitute the bulk of the surface area within the boundaries of the state. Disparate regulatory treatment for rural telephone carriers requires relaxed regulation for rural telephone carriers with the objective of reducing the cost of regulation as well as the regulatory burden, permitting pricing flexibility and expediting required rate approvals, all in a manner consistent with both the purpose of an orderly transition from regulation to a competitive market environment and the federal act.

Chapter 295 Section 3

Section 3. DEFINITIONS.--As used in the Rural Telecommunications Act of New Mexico:

A. "affordable rates" means rates for basic service that promote universal service within a local exchange service area, giving consideration to the economic conditions and costs to provide service in the area in which service is provided;

B. "basic service" means service that is provided to a rural end-user customer that is consistent with the federal act;

C. "cable service" means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service;

D. "commission" means the public regulation commission;

E. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the federal act;

F. "federal act" means the federal Telecommunications Act of 1996;

G. "fund" means the state rural universal service fund;

H. "incumbent local exchange carrier" means a person that:

(1) was designated as an eligible telecommunications carrier by the state corporation commission in Docket #97-93-TC by order dated October 23, 1997, or that provided local exchange service in this state on February 8, 1996; or

(2) became a successor or assignee of an incumbent local exchange carrier;

I. "incumbent rural telecommunications carrier" means a local exchange carrier that serves fewer than fifty thousand access lines within the state and was designated as an eligible telecommunications carrier by the state corporation commission on or before November 1, 1997, including any successor in interest thereto;

J. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

K. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications carrier within a local exchange area;

L. "long distance service" means telecommunications service between local exchange areas that originate and terminate within the state;

M. "private telecommunications service" means a system, including its construction, maintenance or operation for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use the service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

N. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate the service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or cable service; and

O. "telecommunications carrier" means a person that provides public telecommunications service.

Chapter 295 Section 4

Section 4. REGULATION BY COMMISSION.--

A. Except as otherwise provided in the Rural Telecommunications Act of New Mexico or the federal act, each public telecommunications service is declared to be affected with the public interest and, as such, subject to the provisions of those acts, including the regulation thereof as provided in those acts.

B. The commission has exclusive jurisdiction to regulate rural telecommunications carriers only in the manner and to the extent authorized by the Rural Telecommunications Act of New Mexico, and Section 63-7-1.1 NMSA 1978 does not apply; provided, however, the commission's jurisdiction includes the regulation of wholesale rates, including access charges and interconnection agreements consistent with federal law and its enforcement and a determination of participation in low-income telephone service assistance programs pursuant to the Low Income Telephone Service Assistance Act.

Chapter 295 Section 5

Section 5. CERTIFICATE REQUIRED.--

A. No rural public telecommunications service shall be offered in this state except in accordance with the provisions of the Rural Telecommunications Act of New Mexico.

B. No rural public telecommunications service shall be offered within this state without the telecommunications carrier first having obtained from the commission a certificate declaring that the operation is in the present or future public convenience and necessity, unless the operation is otherwise authorized by the Rural Telecommunications Act of New Mexico.

C. The commission has full power and authority to determine matters of public convenience and necessity relating to the issuance of a certificate of public convenience and necessity to a provider of rural public telecommunications service, but in keeping with the purposes of the Rural Telecommunications Act of New Mexico and the federal act, the commission shall not deny an applicant a certificate on the grounds of need if it is shown that the applicant possesses adequate financial resources and technical competency to provide the service.

D. For purposes of considering and acting upon applications for certificates pursuant to this section, the commission may adopt rules on a competitively neutral basis and consistent with the provisions of the Rural Telecommunications Act of New Mexico and the federal act, necessary to preserve and advance universal service, protect the public

safety and welfare, ensure the continued quality of rural public telecommunications services and safeguard the rights of the consumers.

E. In determining whether to issue a certificate to provide rural public telecommunications service, the commission shall consider the following:

(1) whether the applicant has sufficient financial resources to provide the proposed telecommunications service properly and continuously;

(2) whether the applicant has competent and experienced management and personnel to provide the proposed telecommunications service;

(3) whether the applicant is willing and able to conform to all applicable laws and the rules of the commission applicable generally to providers of telecommunications; and

(4) if any exemption, suspension or modification is available to any provider of the subject service in the subject area.

F. All certificates of public convenience and necessity shall:

(1) continue in force, notwithstanding the provisions of this section; and

(2) remain subject to all terms and conditions imposed by statute or commission order at the time of issuance or in connection with any subsequent amendment, notwithstanding the provisions of this section.

Chapter 295 Section 6

Section 6. STATE RURAL UNIVERSAL SERVICE FUND--ESTABLISHMENT--BOARD.--

A. No later than January 1, 2000, the commission shall implement a "state rural universal service fund" to maintain and support at affordable rates those public telecommunications services as are determined by the commission. All of the balances in the existing New Mexico universal service fund as of July 1, 1999 shall be transferred into the state rural universal service fund.

B. The fund shall be financed by a surcharge on all intrastate retail public telecommunications services revenue, excluding revenue from services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding from revenue all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose of funding the fund, the commission has the authority to apply the surcharge on all intrastate retail public telecommunications services provided by telecommunications carriers and to comparable retail alternative services provided by telecommunications carriers and non-telecommunications carriers, including commercial mobile radio

services, operator services and aggregator services, offered by providers other than telecommunications carriers, at a competitively and technologically neutral rate or rates to be determined by the commission. In prescribing competitively and technologically neutral surcharge rates, the commission may make distinctions between services subject to a surcharge, but it shall require telecommunications carriers and non-telecommunications carriers to apply uniform surcharge rates for the same or comparable services. Money deposited in the fund is not public money, and the administration of the fund is not subject to the provisions of law regulating public funds. The commission shall not apply surcharges to a private telecommunications network.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers, targeted to high-cost rural areas, and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that reduces implicit subsidies, including access charges and ensures universal service in the state.

D. The commission shall:

(1) establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of service at affordable rates without unreasonably increasing rates for basic service while still granting eligible telecommunications carriers a reasonable profit on supported services in geographic areas requiring support from the fund, but the eligibility criteria shall not require any investigations of the costs or rates of a telecommunications carrier receiving support from the fund other than that provided for in Subsection E of this section. The eligibility criteria shall not restrict or limit an eligible telecommunications carrier from receiving federal universal service support;

(2) provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the fund;

(3) determine those geographic areas and local exchange services requiring support from the fund; and

(4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law.

E. The commission shall adopt rules for the implementation and administration of the fund in accordance with the provisions of this section. The cost basis for establishing the fund and determining the rate of distribution of the fund for areas served by an incumbent rural telecommunications carrier shall be the same cost of and shall be consistent with the federal support mechanisms for providing the supported service by geographic area, determined by the federal communications commission. The cost basis established by the commission for areas served by incumbent rural telecommunications carriers shall include the same return authorized by the federal communications commission for use in rates filed by the national exchange carriers

association, or its successor, at the federal communications commission for member carriers. The revenue basis for rural telecommunications carriers with fewer than fifty thousand access lines shall include only revenues from public telecommunications services provided by the eligible telecommunications carrier.

F. The commission shall, upon implementation of the fund, select a neutral third party administrator to collect, administer and disburse money from the fund under the supervision and control of the commission pursuant to established criteria and rules promulgated by the commission. The administrator may be reasonably compensated for the specified services from the surcharge proceeds to be received by the fund pursuant to Subsection B of this section. The administrator shall consult with an advisory board established by the commission composed of representatives from all participating providers and the attorney general or one other customer representative, provided that the total number of individual representatives on the advisory board shall not exceed thirteen. For purposes of this subsection, the commission shall not be a neutral third party administrator.

G. The fund established by the commission shall ensure the availability of local exchange service as determined by the commission at affordable rates in rural high cost areas of the state.

H. To ensure that providers of intrastate long distance service contribute to the fund and to further ensure that the surcharge to be paid by the end-user customer will be held to a minimum, no later than December 31, 1999, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting of intrastate retail long distance revenues.

I. Upon commission action to replace implicit subsidies with explicit subsidies, the commission shall reduce in a revenue-neutral basis rates for intrastate telecommunications services, other than basic local exchange service, excluding rates affected by the low-income telephone assistance program, in an amount equal to payments received by a rural telecommunications carrier from the fund. Any reductions in charges for access services resulting from compliance with this section shall be passed on for the benefit of consumers in New Mexico.

Chapter 295 Section 7

Section 7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL TELECOMMUNICATIONS CARRIER.--

A. Rates for retail rural public telecommunications services provided by an incumbent rural telecommunications carrier shall be subject to regulation by the commission only in the manner and to the extent authorized by this section.

B. An incumbent rural telecommunications carrier shall file tariffs for all retail public telecommunications services, other than residential local exchange service, which shall

be effective after ten days' notice to the commission and publication in a local newspaper in the incumbent service area. An incumbent rural telecommunications carrier shall remain subject to complaint by an interested party subject to Section 10 of the Rural Telecommunications Act of New Mexico.

C. Rates for residential local exchange service may be increased by an incumbent rural telecommunications carrier only after sixty days notice to all affected subscribers. The notice of increase shall include:

(1) the reasons for the rate increase;

(2) a description of the affected service;

(3) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase;

(4) a list of local exchange areas that are affected by the proposed rate increase; and

(5) the dates, times and places for the public informational meetings required by this section.

D. An incumbent rural telecommunications carrier may increase its rates for residential local exchange service in the manner otherwise provided in this section as necessary to recover a reasonable allocation of costs incurred due to requirements imposed by any federal or state law or rule. An incumbent rural telecommunications carrier that proposes to increase its rates for residential local exchange service shall hold at least one public informational meeting in each public regulation commissioner's district as established by the Public Regulation Commission Apportionment Act in which there is a local exchange area affected by the rate change.

E. Residential local exchange service rates increased by a rural telecommunications carrier pursuant to Subsection D of this section shall be reviewed by the commission only upon written protest signed by two and one-half percent of all affected subscribers or upon the commission staff's own motion for good cause. The protest shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review and the relief that the persons protesting desire. If a proper protest is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of an incumbent rural telecommunications carrier, the commission may accept and file the complaint and, upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the intrastate cost of providing the service, that will include cost and rate of return in accordance with Subsection E of Section 6 of the Rural Telecommunications Act of New Mexico. In the

order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates shall be deemed approved. For purposes of this section, cost shall also include a reasonable amount of joint and common costs incurred by the telecommunications carrier in its operations and may include other accounting adjustments authorized by the commission.

F. A rural telecommunications carrier that serves less than five percent of the state's aggregate, statewide subscriber lines may at any time elect to file an application with the commission requesting the commission to prescribe fair, just and reasonable rates for the carrier based on the carrier's revenue, expenses and investment in accordance with traditional rate-making principles.

G. Rates for local exchange, vertical and long distance service to retail end-user customers may be reduced to a level equal to, but not below, the intrastate cost, which shall include cost and rate of return pursuant to Subsection E of Section 6 of the Rural Telecommunications Act of New Mexico. If an incumbent rural telecommunications carrier loses its exemption pursuant to Section 251 of the federal act, the rate for a service, excluding basic service, must cover the cost of the service, including the imputed rate of wholesale service elements as may be required by the commission. The cost of long distance service must also include any interexchange access rates charged to another telecommunications carrier for the service.

H. An incumbent rural telecommunications carrier operating pursuant to this section shall have the ability to offer or discontinue offering special incentives, discounts, packaged offerings, temporary rate waivers or other promotions, or to offer individual contracts.

Chapter 295 Section 8

Section 8. EXEMPTION FOR PRIVATE SERVICE.--Construction, maintenance or operation of a private telecommunications service does not constitute the provision of rural public telecommunications service, and a private telecommunications service shall not be subject to regulation by the commission pursuant to the Rural Telecommunications Act of New Mexico.

Chapter 295 Section 9

Section 9. REGULATION OF INDIVIDUAL CONTRACTS TO FACILITATE COMPETITION.--

A. In accordance with the provisions of this section, the commission shall regulate the rates, charges and service conditions for individual contracts for rural public telecommunications services in a manner that authorizes the provision of all or any

portion of a public telecommunications service under stated or negotiated terms to any person or entity that has acquired or is preparing to acquire, through construction, lease or any other form of acquisition, similar public telecommunications services from an alternate source.

B. At any time, the provider of rural public telecommunications services may file a verified application with the commission for authorization to provide a public telecommunications service on an individual contract basis. The application shall describe the telecommunications services to be offered, the party to be served and the parties offering the service, together with other information and in a form that the commission may prescribe. Such additional information shall be reasonably related to the determination of the existence of a competitive offer.

C. An application is deemed approved when filed unless the commission denies it. The commission shall approve or deny any such application within ten days after filing or a different period established by the commission, not to exceed sixty days, giving consideration to the requirements of any contract negotiations. If the commission has not acted on any application within the time period established, the application is deemed granted. The commission shall deny the application only upon a finding that the application fails to set forth prescribed information or that the subject or comparable services are not being offered to the customer by parties other than the applicant or that the contract fails to cover the costs of the service.

D. Within ten days after the conclusion of negotiations, the provider of rural public telecommunications services shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service, which shall be maintained by the commission on a confidential basis subject to an appropriate protective order.

Chapter 295 Section 10

Section 10. COMPLAINT ALLEGING VIOLATION BY PROVIDER OF RURAL PUBLIC TELECOMMUNICATIONS SERVICES.--

A. Complaint may be made by any interested party setting forth any act or omission by a provider of rural public telecommunications services alleged to be in violation of any provision of the Rural Telecommunications Act of New Mexico or any order or rule of the commission issued pursuant to that act.

B. Upon filing of the complaint, the commission shall set the time and place of hearing and at least ten days' notice of the hearing shall be given to the party complained of. Service of notice of the hearing shall be made in any manner giving actual notice.

C. All matters upon which complaint may be founded may be joined in one hearing and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission or on review by the courts. The persons the commission allows

to intervene shall be joined and heard, along with the complainant and the party complained of.

D. The burden shall be on the party complaining to show a violation of a provision of the Rural Telecommunications Act of New Mexico or an order or rule of the commission issued pursuant to that act.

E. After conclusion of the hearing, the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or his attorney.

F. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure promulgated by the commission.

Chapter 295 Section 11

Section 11. VALIDITY OF ORDERS--SUBSTANTIAL COMPLIANCE WITH ACT SUFFICIENT.--A substantial compliance by the commission with the requirements of the Rural Telecommunications Act of New Mexico shall be sufficient to give effect to all rules, orders and acts of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature, in respect thereto.

Chapter 295 Section 12

Section 12. APPEAL OF ORDERS OF THE COMMISSION.--Any provider of rural public telecommunications services and any other person in interest being aggrieved by a final order or determination of the commission under the Rural Telecommunications Act of New Mexico may file a notice of appeal in the supreme court asking for a review of the commission's final orders. A notice of appeal shall be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party.

Chapter 295 Section 13

Section 13. APPEAL ON THE RECORD.--

A. An appeal shall be on the record made before the commission and shall be governed by the appellate rules applicable to administrative appeals.

B. The supreme court shall affirm the commission's order unless it is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

Chapter 295 Section 14

Section 14. INJUNCTIONS--CONTEMPT.--The commission may apply to the district court for injunctions to prevent violations of any provision of the Rural Telecommunications Act of New Mexico or of any rule or order of the commission issued pursuant to that act, and the court has the power to grant such injunctions and to enforce such injunctions by contempt procedure.

Chapter 295 Section 15

Section 15. DELAYED REPEAL.--Section 63-9A-6.1 NMSA 1978 (being Laws 1987, Chapter 21, Section 4, as amended) is repealed effective July 1, 2000.

Chapter 295 Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

SUBSTITUTE FOR SENATE BILL 680, AS AMENDED

CHAPTER 296

RELATING TO BAIL BONDSMEN; PROVIDING FOR EDUCATIONAL REQUIREMENTS FOR LICENSURE AND RENEWAL.

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

Chapter 296 Section 1

Section 1. A new section of the Bail Bondsmen Licensing Law is enacted to read:

"EDUCATIONAL REQUIREMENTS.--

A. In order to be eligible to take the examination required to be licensed as a bail bondsman, the applicant shall complete not less than thirty clock hours of formal classroom education in subjects pertinent to the duties and responsibilities of a bail bondsman, including ethics and all laws and rules related to the bail bond business. In

addition, the applicant shall complete one hundred twenty hours of on-the-job training under the direct supervision of a sponsoring bail bondsman who shall certify in writing that he has taught the applicant the subjects pertinent to the duties and responsibilities of a bail bondsman, including ethics and all laws and rules related to the bail bond business, and that the applicant is prepared to take the examination. The scope of the examination shall be as broad as the bail bond business.

B. Instead of the education requirement in Subsection A of this section, an applicant may become eligible to take the examination required to be licensed as a bail bondsman by apprenticing for a minimum of six months with a sponsoring bail bondsman. The sponsoring bail bondsman shall certify in writing that he has taught the applicant the subjects pertinent to the duties and responsibilities of a bail bondsman, including ethics and all laws and rules related to the bail bond business, and that the applicant is prepared to take the examination. The scope of the examination shall be as broad as the bail bond business.

C. In order to be eligible to take the examination required to be licensed as a solicitor, each person shall complete not less than ten clock hours of formal classroom education in subjects pertinent to the duties and responsibilities of a solicitor, including ethics and all laws and rules related to the bail bond business. In addition, the applicant for a solicitor's license shall complete thirty hours of on-the-job training under the direct supervision of a sponsoring bail bondsman who shall certify in writing that he has taught the applicant the subjects pertinent to the duties and responsibilities of a solicitor, including ethics and all laws and rules related to the bail bond business, and that the applicant is prepared to take the examination. The scope of the examination shall be as broad as the bail bond business.

D. Prior to renewal of a bail bondsman's or solicitor's license, a licensee shall complete annually not less than fifteen clock hours of continuing education in subjects pertinent to the duties and responsibilities of a bail bondsman or solicitor, including ethics and all laws and rules related to the bail bond business. Such continuing education shall not include a written or oral examination.

E. A provider approved by the superintendent to offer prelicensing classroom education for bail bondsmen or continuing education classes for bail bondsmen and solicitors shall be required to offer such classes in at least two geographic areas of the state until such time as the superintendent determines that sufficient classes are available statewide.

F. It is a violation of the New Mexico Insurance Code for a person to falsely represent to the superintendent that the education requirements of this section have been complied with.

G. The superintendent shall adopt and promulgate such rules as are necessary for the effective administration of this section."

SENATE BILL 457, AS AMENDED

CHAPTER 297

RELATING TO DISABILITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO EXPAND PARKING FOR PERSONS WITH SEVERE MOBILITY IMPAIRMENT; PROVIDING FOR ENFORCEMENT OF CERTAIN PARKING PRIVILEGES; CREATING PENALTIES.

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

Chapter 297 Section 1

Section 1. SHORT TITLE.--Sections 1 and 2 of this act may be cited as the "Parking Placard Abuse Act".

Chapter 297 Section 2

Section 2. PROGRAM CREATED.--The "placard abuse prevention program" is created in the governor's committee on concerns of the handicapped to ensure compliance with statutes affecting parking privileges for persons with severe mobility impairment and safe and effective use of designated disabled parking space. The committee shall design and implement a program to:

A. monitor the system of eligibility for and use of parking placards and special registration plates;

B. provide public awareness education and training to address barriers to the appropriate use of designated disabled parking space;

C. pursue efforts to reduce abuse and misuse of designated disabled parking space privileges, including revocation of parking placards and special registration plates; and

D. provide education, training and technical assistance to local law enforcement agencies and volunteers on enforcement of statutes affecting use of designated disabled parking space.

Chapter 297 Section 3

Section 3. Section 3-51-46 NMSA 1978 (being Laws 1973, Chapter 22, Section 3) is amended to read:

"3-51-46. PASSENGER MOTOR VEHICLE OF DISABLED PERSON--PARKING PRIVILEGE.--Passenger motor vehicles owned by and carrying disabled persons and displaying special registration plates, or passenger motor vehicles carrying persons with severe mobility impairment and displaying parking placards, issued pursuant to Section 66-3-16 NMSA 1978 shall be permitted to park for unlimited periods of time in parking

zones restricted as to length of time parking is normally permitted and are exempt from payment of any parking fee of the state or its political subdivisions. The provisions of this section shall prevail over any other law, rule or local ordinance but do not apply to zones where stopping, standing or parking is prohibited, zones reserved for special types of vehicles, zones where parking is prohibited during certain hours of the day in order to facilitate traffic during those hours when parking is prohibited and zones subject to similar regulation because parking presents a traffic hazard."

Chapter 297 Section 4

Section 4. Section 66-1-4.1 NMSA 1978 (being Laws 1990, Chapter 120, Section 2) is amended to read:

"66-1-4.1. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "abandoned vehicle" means a vehicle or motor vehicle that has been determined by a New Mexico law enforcement agency:

(1) to have been left unattended on either public or private property for at least thirty days;

(2) not to have been reported stolen;

(3) not to have been claimed by any person asserting ownership; and

(4) not to have been shown by normal record checking procedures to be owned by any person;

B. "access aisle" means a space designed to allow a person with severe mobility impairment to safely exit and enter a motor vehicle and that is immediately adjacent to a designated disabled parking space and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked with blue striping;

C. "additional place of business", for dealers and wreckers of vehicles, means locations in addition to an established place of business as defined in Section 66-1-4.5 NMSA 1978 and meeting all the requirements of an established place of business, except Paragraph (5) of Subsection B of Section 66-1-4.5 NMSA 1978, but "additional place of business" does not mean a location used solely for storage and that is not used for wrecking, dismantling, sale or resale of vehicles;

D. "alcoholic beverages" means any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol but excluding medicinal bitters; and

E. "authorized emergency vehicle" means any fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the director of the New Mexico state police division of the department of public safety or local authorities."

Chapter 297 Section 5

Section 5. Section 66-1-4.4 NMSA 1978 (being Laws 1990, Chapter 120, Section 5, as amended) is amended to read:

"66-1-4.4. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "day" means calendar day, unless otherwise provided in the Motor Vehicle Code;

B. "dealer", except as herein specifically excluded, means any person who sells or solicits or advertises the sale of new or used motor vehicles, manufactured homes or trailers subject to registration in this state; "dealer" does not include:

(1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles;

(4) finance companies, banks and other lending institutions making sales of repossessed vehicles; or

(5) licensed brokers under the Manufactured Housing Act who, for a fee, commission or other valuable consideration, engage in brokerage activities related to the sale, exchange or lease purchase of pre-owned manufactured homes on a site installed for a consumer;

C. "declared gross weight" means the maximum gross vehicle weight or combination gross vehicle weight at which a vehicle or combination will be operated during the registration period, as declared by the registrant for registration and fee purposes; the vehicle or combination shall have only one declared gross weight for all operating considerations;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "designated disabled parking space" means any space, including an access aisle, marked and reserved for the parking of a passenger vehicle that carries registration plates or a parking placard indicating disability in accordance with Section 66-3-16

NMSA 1978, and designated by a conspicuously posted sign bearing the international disabled symbol of a wheelchair and if paved, by a clearly visible depiction of this symbol painted in blue on the pavement of the space;

F. "director" means the secretary;

G. "disqualification" means a prohibition against driving a commercial motor vehicle;

H. "distinguishing number" means the number assigned by the department to a vehicle whose identifying number has been destroyed or obliterated or the number assigned by the department to a vehicle that has never had an identifying number;

I. "distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer;

J. "division", without further specification, "division of motor vehicles" or "motor vehicle division" means the department;

K. "driver" means every person who drives or is in actual physical control of a motor vehicle, including a motorcycle, upon a highway, who is exercising control over or steering a vehicle being towed by a motor vehicle or who operates or is in actual physical control of an off-highway motor vehicle;

L. "driver's license" means a license or a class of license issued by a state or other jurisdiction to an individual that authorizes the individual to drive a motor vehicle; and

M. "driveaway-towaway operation" means any operation in which any motor vehicle, new or used, is the item being transported when one set or more of wheels of any such motor vehicle is on the roadway during the course of transportation, whether or not the motor vehicle furnishes the motive power."

Chapter 297 Section 6

Section 6. Section 66-1-4.14 NMSA 1978 (being Laws 1990, Chapter 120, Section 15, as amended) is amended to read:

"66-1-4.14. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading and unloading;

B. "parking lot" means a parking area provided for the use of patrons of any office of state or local government or of any public accommodation, retail or commercial establishment;

C. "parts car" means a motor vehicle generally in nonoperable condition that is owned by a collector to furnish parts that are usually nonobtainable from normal sources, thus enabling a collector to preserve, restore and maintain a motor vehicle of historic or special interest;

D. "pedestrian" means any natural person on foot;

E. "person" means every natural person, firm, copartnership, association, corporation or other legal entity;

F. "personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address other than zip code, telephone number and medical or disability information, but "personal information" does not include information on vehicles, vehicle ownership, vehicular accidents, driving violations or driver status;

G. "placard" or "parking placard" means a card-like device that identifies the vehicle as being currently in use to transport a person with severe mobility impairment and issued pursuant to Section 66-3-16 NMSA 1978 to be displayed inside a motor vehicle so as to be readily visible to an observer outside the vehicle;

H. "pneumatic tire" means every tire in which compressed air is designed to support the load;

I. "pole trailer" means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, structures, pipes and structural members capable, generally, of sustaining themselves as beams between the supporting connections;

J. "police or peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of the Motor Vehicle Code;

K. "private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner, but not other persons; and

L. "property owner" means the owner of a piece of land or the agent of that property owner."

Chapter 297 Section 7

Section 7. Section 66-3-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 36, as amended) is amended to read:

"66-3-16. SPECIAL REGISTRATION PLATES--DISABLED PERSONS--PARKING PLACARD.--

A. The division shall issue distinctive registration plates to any disabled person who so requests and who proves satisfactorily to the division that he has suffered the loss, or the complete and total loss of use of, one or both legs at or above the ankle or of one or both arms at or above the wrist for use on motor vehicles owned by the person. No fee in addition to the regular registration fee, if any, applicable to the motor vehicle shall be collected for issuance of special registration plates pursuant to this section.

B. No person shall falsely represent himself to be disabled so as to be eligible to be issued a special registration plate or a parking placard pursuant to this section when he is in fact not disabled. Upon notice and opportunity to be heard, the division may revoke and demand return of any placard when:

(1) it was issued in error or with false information;

(2) the person receiving the placard is no longer eligible; or

(3) the placard is being used by ineligible persons.

C. Upon written application to the division accompanied by a medical statement by a licensed physician attesting to the permanent disability, a resident of the state who has a disability that limits or impairs the ability to walk, as provided in Subsection G of this section, may apply for and be granted the issuance of no more than two parking placards for display upon a motor vehicle registered to him or motor vehicle owned by another person who is transporting him. The physician shall provide the division all information and records necessary to issue a permanent parking placard. Once approved for use of a permanent parking placard, a person shall not be required to furnish further medical information about his mobility impairment.

D. A parking placard issued pursuant to this section shall expire on the same date the person's license or identification card issued pursuant to Section 66-5-401 NMSA 1978 expires.

E. The division shall issue two-sided hanger-style parking placards with the following characteristics:

(1) the international symbol of access shall be displayed on both sides of the placard and shall be at least three inches in height, centered on the placard and white on a blue field;

(2) an identification number enabling the division to identify the holder of each placard. The division shall maintain this information in a readily retrievable format, provide it to the governor's committee on concerns of the handicapped and make it available on

demand to any law enforcement agency just as it provides vehicle registration and driver's license information;

(3) the date of expiration; and

(4) the division seal or other identification of the issuing authority.

F. Upon written application to the division accompanied by a medical statement from a licensed physician attesting to a temporary disability, a person who has a temporary disability that limits or impairs the ability to walk may be issued a temporary placard for no more than one year. The physician shall provide the division all information and records necessary to issue a temporary placard.

G. For the purpose of obtaining a placard, a person with a "severe mobility impairment" means the person:

(1) cannot walk one hundred feet without stopping to rest;

(2) cannot walk without the use of a brace, a cane, a crutch, assistance from another person, a prosthetic device, a wheelchair or another assistive device;

(3) is restricted by lung disease to such an extent that the person's forced respiratory volume, when exhaling for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty millimeters on room air at rest;

(4) uses portable oxygen;

(5) has a severe cardiac condition; or

(6) is so severely limited in his ability to walk due to an arthritic, neurologic or orthopedic condition that the person cannot ascend or descend more than ten stair steps.

H. Special registration plates or placards issued to a person with severe mobility impairment by another state or foreign jurisdiction shall be honored until the vehicle is registered or the placard holder establishes residency in this state.

I. All parking placards issued on or after July 1, 1999 shall be issued in accordance with the provisions of this section."

Chapter 297 Section 8

Section 8. Section 66-3-16.1 NMSA 1978 (being Laws 1995, Chapter 129, Section 2) is amended to read:

"66-3-16.1. PROHIBITED ACTS--PENALTIES.--

A. Any person who provides false information in order to acquire, or who assists an unqualified person to acquire, a special registration plate or parking placard as provided in Section 66-3-16 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Any person, other than the person to whom a special registration plate or a parking placard was issued, who in the absence of the holder of the plate or placard, parks in a designated disabled parking space while displaying the plate or placard, is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. A special registration plate or parking placard displayed on a vehicle parked in a designated disabled parking space in the absence of the holder of that plate or placard, is subject to immediate seizure by a law enforcement official and if seized shall be delivered to the division within seventy-two hours. Failure to surrender the parking placard on demand of a law enforcement officer is a petty misdemeanor and punishable by a fine not to exceed one hundred dollars ($100)."

Chapter 297 Section 9

Section 9. Section 66-7-352.4 NMSA 1978 (being Laws 1983, Chapter 45, Section 4) is amended to read:

"66-7-352.4. PARKING LOTS--STANDARDS.--

A. Every parking lot coming under the provisions of the Disabled Parking Standards and Enforcement Act shall have designated disabled parking spaces as provided in Subsection B of this section. No building permit shall be issued by any local government for the construction or substantial renovation of a commercial building inviting public access unless the parking lot has designated disabled parking spaces as delineated in Subsection B of this section.

B. The minimum numbers of designated disabled parking spaces are as follows:

TOTAL SPACES IN PARKING LOT	MINIMUM DESIGNATED DISABLED PARKING SPACES
1 to 25	1
26 to 35	2
36 to 50	3
51 to 100	4

101 to 300	8
301 to 500	12
501 to 800	16
801 to 1,000	20
more than 1,000	20, plus 1 for each 100 over 1,000.

The designated disabled parking spaces shall be located so as to provide the most convenient access to entranceways or to the nearest curb cut. Every parking lot shall have at least one designated disabled parking space designed to accommodate a motor vehicle passenger van, and there shall be a minimum of one such space for every eight designated disabled parking spaces."

Chapter 297 Section 10

Section 10. Section 66-7-352.5 NMSA 1978 (being Laws 1983, Chapter 45, Section 5, as amended) is amended to read:

"66-7-352.5. UNAUTHORIZED USE--PENALTIES.--

A. It is unlawful for any person to park a motor vehicle not displaying a special registration plate or a parking placard issued pursuant to Section 66-3-16 NMSA 1978 in a designated disabled parking space.

B. It is unlawful for any person to park a motor vehicle in such a manner so as to block access to any part of a curb cut designed for access by persons with severe mobility impairment.

C. Any person convicted of violating Subsection A or B of this section is subject to a fine of not less than one hundred dollars ($100) or more than three hundred dollars ($300). Failure to properly display a parking placard or special registration plate issued pursuant to Section 66-3-16 NMSA 1978 is not a defense against a charge of violation of Subsection A or B of this section.

D. A vehicle parked in violation of Subsection A or B of this section is subject to being towed at the expense of the vehicle owner upon authorization by law enforcement personnel or by the property owner or manager of a parking lot."

SENATE JUDICIARY COMMITTEE

SUBSTITUTE FOR SENATE BILL 531

CHAPTER 298

RELATING TO DRUGS; AMENDING SECTIONS OF THE NMSA 1978 TO BRING NEW MEXICO LAWS PROVIDING FOR LABELING OF PHARMACEUTICALS INTO COMPLIANCE WITH THE FEDERAL FOOD, DRUG AND COSMETICS ACT.

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

Chapter 298 Section 1

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended by Laws 1997, Chapter 240, Section 1 and by Laws 1997, Chapter 244, Section 1 and also by Laws 1997, Chapter 253, Section 2) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means:

(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals and includes the domestic animal biological products regulated under the federal Virus- Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the biological products applicable to man regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) articles other than food that affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug other than a controlled substance that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device or any likeness of a drug manufacturer, processor, packer or distributor other than the person who manufactured, processed, packed or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in man or other animals; or

(3) intended to affect the structure or a function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a physician, doctor of oriental medicine, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, pharmacist clinician, certified nurse-midwife or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means any drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act; and

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a__________", the blank to be filled with the word "physician", "doctor of oriental medicine", "dentist", "veterinarian", "certified nurse practitioner", "clinical nurse specialist", "pharmacist clinician", "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device."

Chapter 298 Section 2

Section 2. Section 26-1-11 NMSA 1978 (being Laws 1967, Chapter 23, Section 11, as amended) is amended to read:

"26-1-11. DRUG OR DEVICE--MISBRANDING.--

A. A drug or device shall be deemed to be misbranded:

(1) if its labeling is false or misleading in any particular;

(2) if in package form, unless it bears a label containing the name and place of the business of the manufacturer, packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the board or issued under the federal act;

(3) if it is a drug subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 U.S.C. Section 353, which provisions describe those substances commonly referred to as "legend drugs", and if the drug is in package form, unless it bears a label on its immediate container, and on any outer container if such there be, including the name and place of the business of the manufacturer of the finished dosage form and the name and place of business of the packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count;

(4) if any word, statement or other information required by or under authority of the New Mexico Drug, Device and Cosmetic Act to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(5) if it is for use by man and contains any quantity of a narcotic or hypnotic substance or any chemical derivative of such substance, which derivative after investigation has been found to be and designated as habit-forming by regulations issued pursuant to Section 502(d) or 511 of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning--May be habit-forming" and meets labeling requirements of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(6) if it is a drug, unless the label bears, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula, the established name, as defined in this section, of the drug, and in case it is fabricated from two or more active ingredients, the established name and quantity of each active

ingredient, including the kind and quantity or proportion of any alcohol and also including the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, antipyrine, amidropyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, thyroid or any derivative or preparation of any such substances contained therein; provided that the requirements for stating the quantity of the active ingredients, other than the quantity of those specifically named in this section, shall apply only to prescription drugs; provided, further, that to the extent that compliance with the requirements of this section is impracticable, exemptions shall be allowed under regulations promulgated by the board or under the federal act.

B. As used in this section, the term "established name" with respect to a drug or ingredient means:

(1) the applicable official name designated pursuant to Section 508 of the federal act; or

(2) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title in such compendium or if neither applies, then the common or usual name, if any, of such drug or of such ingredient; provided that where an article is recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

C. A drug or device shall be deemed to be misbranded unless its labeling bears adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users; provided that where adequate directions for use as applied to any drug or device are not necessary for the protection of the public health, the board shall promulgate regulations exempting such drug or device from such requirements; provided, further, that articles exempted under regulations issued under Section 502 (f) of the federal act may also be exempt.

D. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium unless it is packed and labeled as prescribed therein; provided that the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not those of the United States pharmacopoeia; provided, further, that in the event of inconsistency between the requirements of this subsection and those of Paragraph (6) of Subsection A of this section as to the name by which the drug

or its ingredients shall be designated, the requirements of Paragraph (6) of Subsection A of this section shall prevail.

E. A drug or device shall be deemed to be misbranded if it has been found by the board or under the federal act to be a drug liable to deterioration unless it is packaged in such form and manner and its label bears the statement of such precautions as the regulations issued by the board or under the federal act require as necessary for the protection of public health. No regulation shall be established for any drug recognized in an official compendium until the board has informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body has failed within a reasonable time to prescribe such requirements.

F. A drug or device shall be deemed to be misbranded if it is a drug and its container is so made, formed or filled as to be misleading or if it is an imitation of another drug or if it is offered for sale under the name of another drug or if it bears a copy, counterfeit or colorable imitation of a trademark, label, container or identifying name or design of another drug.

G. A drug or device shall be deemed to be misbranded if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended or suggested in the labeling.

H. A drug or device shall be deemed to be misbranded if it is or purports to be or is represented as a drug composed wholly or partly of insulin unless it is from a batch with respect to which a certificate or release has been issued pursuant to Section 506 of the federal act and such certificate or release is in effect with respect to such drug.

I. A drug or device shall be deemed to be misbranded if it is or purports to be or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin or any other antibiotic drug or any derivative thereof unless it is from a batch with respect to which a certificate or release has been issued pursuant to Section 507 of the federal act and such certificate or release is in effect with respect to such drug; provided that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or (d) of the federal act. For the purpose of this subsection, the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution, including the chemically synthesized equivalent of any such substance.

J. A drug or device shall be deemed to be misbranded if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of Subsection C of Section 26-1-9 NMSA 1978 or of the federal act.

K. A drug or device shall be deemed to be misbranded, in the case of any dangerous drug distributed or offered for sale in this state, unless the manufacturer, packer, distributor or retailer thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer or distributor or retailer with respect to that drug a true statement of:

(1) the established name as defined in Paragraph (6) of Subsection A of this section;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Section 502(e) of the federal act; and

(3) such other information in brief summary relating to side effects and contraindications as are required in regulations issued under the federal act.

L. A drug or device shall be deemed to be misbranded if a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

M. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally packaged in accordance with requirements of the New Mexico Drug, Device and Cosmetic Act shall be deemed to be misbranded unless such drugs or devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the board or under the federal act.

N. A dangerous drug, except for drugs declared dangerous pursuant to Subsection B of Section 26-1-18 NMSA 1978, shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear either of the following legends:

(1) "Caution: federal law prohibits dispensing without prescription."; or

(2) "RX only"."

Chapter 298 Section 3

Section 3. Section 61-11-2 NMSA 1978 (being Laws 1969, Chapter 29, Section 2, as amended) is amended to read:

"61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to such other persons authorized by law to receive such information, regardless of whether such information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in any official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or any function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

(7) adverse drug reactions; and

(8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to any drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by any state, territory or possession of the United States who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "patient counseling" means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or device;

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

V. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

W. "pharmacist" means a person who is licensed as a pharmacist in this state;

X. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Y. "pharmacy" means a licensed place of business where drugs are compounded or dispensed and pharmaceutical care is provided;

Z. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

AA. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

BB. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

CC. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or his agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

DD. "significant adverse drug reaction" means a drug-related incident that may result in harm, injury or death to the patient; and

EE. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution."

Chapter 298 Section 4

Section 4. Section 61-11B-2 NMSA 1978 (being Laws 1993, Chapter 191, Section 2, as amended) is amended to read:

"61-11B-2. DEFINITIONS.--As used in the Pharmacist Prescriptive Authority Act:

A. "administer" means the direct application of a drug by any means to the body of a person;

B. "board" means the board of pharmacy;

C. "dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods 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 the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend of "Caution: federal law prohibits dispensing without prescription." or "RX only";

D. "guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a practitioner or group of practitioners that delegates prescriptive authority;

E. "monitor dangerous drug therapy" means the review of the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs, including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting;

F. "pharmacist" means a person duly licensed by the board to engage in the practice of pharmacy pursuant to the Pharmacy Act;

G. "pharmacist clinician" means a pharmacist with additional training, at least equivalent to the training received by a physician assistant, required by regulations adopted by the board in consultation with the New Mexico board of medical examiners and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol;

H. "practitioner" means a physician duly authorized by law in New Mexico to prescribe controlled substances; and

I. "prescriptive authority" means the authority to prescribe, administer or modify dangerous drug therapy."

HOUSE BILL 504, AS AMENDED

CHAPTER 299

RELATING TO DOMESTIC AFFAIRS; PROVIDING FOR ACCRUAL OF INTEREST ON DELINQUENT CHILD AND SPOUSAL SUPPORT.

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

Chapter 299 Section 1

Section 1. ACCRUAL OF INTEREST--DELINQUENT CHILD AND SPOUSAL SUPPORT.--

A. Interest shall accrue on delinquent child support and spousal support at the rate set forth in Section 56-8-4 NMSA 1978 in effect when the support payment becomes due

and shall accrue from the date the support is delinquent until the date the support is paid or consolidated in a judgment.

B. Interest shall accrue on a consolidated judgment for delinquent support at the rate provided in Section 56-8-4 NMSA 1978 in effect when the consolidated judgment is entered until the judgment is satisfied.

C. Unless the order, judgment, decree or wage withholding order specifies a due date other than the first day of the month, support shall be due on the first day of each month and, if not paid by that date, shall be delinquent.

D. In calculation of support arrears, payments of support shall be first applied to the current support obligation, next to any delinquent support, next to any consolidated judgment of delinquent support, next to any accrued interest on delinquent support and next to any interest accrued on a consolidated judgment of delinquent support.

HOUSE BILL 343, AS AMENDED

HOUSE JOINT RESOLUTION 3

PROPOSING THE TRANSFER OF THE PROPERTY WHERE LAS CUMBRES LEARNING CENTER IS LOCATED TO THE COUNTY OF RIO ARRIBA.

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

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease of property for a period exceeding twenty-five years in duration or of a value of one hundred thousand dollars ($100,000) or more; and

WHEREAS, Rio Arriba county requests that the land and improvements on the land where Las Cumbres learning center is located be transferred to that county for a period of time in excess of twenty-five years; and

WHEREAS, the property where Las Cumbres learning center is located is 1.040 acres more or less at Hunter and Espinosa streets in Espanola in Rio Arriba county, New Mexico and is more particularly described as:

"lying and being situate within Exception 60, Private Claim 34. P.1, of the Santa Clara Pueblo Grant, Section 3, Township 20 North, Range 8 East, N.M.P.M., City of Espanola, County of Rio Arriba, State of New Mexico"; and

WHEREAS, the property is further described as:

"beginning at a point for the southeasterly corner of the above said tract, said point bears North 89 degrees 45 minutes 36 seconds West a distance of 23.86 feet from A.P.3 of Comp. 54, P.C. 57, P1 of the above said Santa Clara Pueblo Grant (marked

with a U.S.G.L.O. brass cap); thence North 89 degrees 39 minutes 57 seconds West from said point of beginning a distance of 149.24 feet; thence North 89 degrees 40 minutes West a distance of 37.74 feet; thence continuing North 89 degrees 40 minutes West a distance of 45.01 feet; thence continuing North 89 degrees 40 minutes West a distance of 58.05 feet; thence North 03 degrees 57 minutes East a distance of 159.32 feet; thence South 89 degrees 40 minutes East a distance of 48.0 feet; thence South 89 degrees 39 minutes 42 seconds East a distance of 232.0 feet; thence South 00 degrees 20 minutes 18 seconds West a distance of 158.98 feet to the point and place of beginning."; and

WHEREAS, the real property is subject to a thirty-two foot road easement along the eastern boundary line of the tract shown on the "Plat of Survey of Las Cumbres Learning Center" done by Arsenio J. Martinez N.M.L.S. No. 4254 on November 25, 1987;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the transfer to Rio Arriba county of Las Cumbres learning center land and improvements on that land in Espanola be ratified and approved pursuant to the provisions of Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the secretary of general services and the county commission of Rio Arriba county.

HOUSE JOINT RESOLUTION 10

PROPOSING TO SELL THE RETIREE HEALTH CARE AUTHORITY PROPERTY AT 625 DON GASPAR AVENUE IN SANTA FE, SANTA FE COUNTY.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale of real property for a consideration of one hundred thousand dollars ($100,000) or more; and

WHEREAS, the retiree health care authority is desirous of selling real property and improvements, legal description set forth below; and

WHEREAS, the retiree health care authority proposes to sell the retiree health care authority property located at 625 Don Gaspar avenue in Santa Fe county, New Mexico, and more particularly described as:

Lots 21 and 22, Block 2 as shown on amended plat of

South Capitol Subdivision, City of Santa Fe, County

of Santa Fe, New Mexico.; and

WHEREAS, the property shall not be sold for less than the value of the property established by the taxation and revenue department using generally acceptable appraisal techniques for this type of property;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed sale be hereby ratified and approved pursuant to the provisions of Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the retiree health care authority.

HOUSE JOINT RESOLUTION 10

HOUSE JOINT RESOLUTION 19

PROPOSING TO TRANSFER STATE OWNERSHIP OF REAL PROPERTY IN CHAVES COUNTY TO CHAVES COUNTY.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale, trade or lease of real property over one hundred thousand dollars ($100,000) belonging to any state agency; and

WHEREAS, Chaves county is desirous of having a portion of land on the property of the Roswell correctional center for a fire station; and

WHEREAS, the property control division of the general services department proposes to transfer to Chaves county for no consideration approximately one-half acre of real property more particularly described as:

a tract of land being approximately .50 acres in size and being a part of and located in the SW/4SW/4 of Section 34, Township 13 South, Range 24 East NMPM;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed transfer of the real property be hereby ratified and approved; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department.

HOUSE JOINT RESOLUTION 19

OFFICIAL ROSTEROF THE STATE OF NEW MEXICO

UNITED STATES SENATORS

Jeff Bingaman, Democrat, Santa Fe

Pete V. Domenici, Republican, Albuquerque

UNITED STATES REPRESENTATIVES

Heather A. Wilson, Republican, District No. 1, Albuquerque

Joseph R. Skeen, Republican, District No. 2, Picacho

Tom Udall, Republican, District No. 3, Santa Fe

STATE OFFICIALS

Gary Johnson, Republican Governor

Walter D. Bradley, Republican Lieutenant Governor

Rebecca Vigil-Giron, Democrat Secretary of State

Domingo P. Martinez, Democrat State Auditor

Michael A. Montoya, Democrat State Treasurer

Patricia A. Madrid, Democrat Attorney General

Ray Powell, Jr., Democrat Commissioner of Public Lands

Herb Hughes, Republican Public Regulation Commissioner, District 1

Bill Pope, Republican Public Regulation Commissioner, District 2

Jerome D. Block, Democrat Public Regulation Commissioner, District 3

Lynda M. Lovejoy, Democrat Public Regulation Commissioner, District 4

Tony Schaefer, Republican Public Regulation Commissioner, District 5

JUSTICES OF THE SUPREME COURT

Pamela B. Minzner, Chief Justice

Joseph F. Baca, Senior Justice

Gene Franchini

Petra J. Maes

Patricio M. Serna

JUDGES OF THE COURT OF APPEALS

Lynn Pickard, Chief Judge

Harris L Hartz

Rudy S. Apodaca

Thomas A. Donnelly

A. Joseph Alarid

M. Christina Armijo

Jonathan B. Sutin

Richard C. Bosson

James J. Wechsler

Michael D. Bustamante

DISTRICT COURTS

DISTRICT JUDGES

FIRST JUDICIAL DISTRICT

SANTA FE, RIO ARRIBA, LOS ALAMOS COUNTIES

Division I T. Glenn Ellington Santa Fe

Division II James A. Hall Santa Fe

Division III Carol J. Vigil Santa Fe

Division IV Michael Vigil Santa Fe

Division V Art Encinias Santa Fe

Division VI Stephen D. Pfeffer Santa Fe

Division VII	Daniel Sanchez	Santa Fe

SECOND JUDICIAL DISTRICT

BERNALILLO COUNTY

Division I	Michael E. Martinez	Albuquerque
Division II	James F. Blackmer	Albuquerque
Division III	Tommy Jewell	Albuquerque
Division IV	Frank Allen, Jr.	Albuquerque
Division V	Ted C. Baca	Albuquerque
Division VI	Neil C. Candelaria	Albuquerque
Division VII	W. Daniel Schneider	Albuquerque
Division VIII	Ross C. Sanchez	Albuquerque
Division IX	Mark A. Macaron	Albuquerque
Division X	Theresa Baca	Albuquerque
Division XI	Diane Dal Santo	Albuquerque
Division XII	Wendy E. York	Albuquerque
Division XIII	Robert Hayes Scott	Albuquerque
Division XIV	W. John Brennan	Albuquerque
Division XV	Richard J. Knowles	Albuquerque
Division XVI	Robert L. Thompson	Albuquerque
Division XVII	Ann M. Kass	Albuquerque
Division XVIII	Susan M. Conway	Albuquerque
Division XIX	Albert S. Murdoch	Albuquerque
Division XX	William F. Lang	Albuquerque

Division		Judge	City
Division	XXI	Angela J. Jewell	Albuquerque
Division	XXII	Deborah Davis Walker	Albuquerque
Division	XXIII	Geraldine E. Rivera	Albuquerque

THIRD JUDICIAL DISTRICT

DONA ANA COUNTY

Division		Judge	City
Division	I	Robert E. Robles	Las Cruces
Division	II	Graden W. Beal	Las Cruces
Division	III	Lou Martinez	Las Cruces
Division	IV	Jerald A. Valentine	Las Cruces
Division	V	Thomas G. Cornish, Jr.	Las Cruces
Division	VI	Grace Duran	Las Cruces

FOURTH JUDICIAL DISTRICT

GUADALUPE, MORA, SAN MIGUEL COUNTIES

Division		Judge	City
Division	I	Eugenio S. Mathis	Las Vegas
Division	II	Jay Gwynne Harris	Las Vegas

FIFTH JUDICIAL DISTRICT

CHAVES, EDDY, LEA COUNTIES

Division		Judge	City
Division	I	Jay W. Forbes	Carlsbad
Division	II	Alvin F. Jones	Roswell
Division	III	Ralph W. Gallini	Lovington
Division	IV	Patrick J. Francoeur	Lovington
Division	V	James L. Shuler	Carlsbad
Division	VI	William Patrick Lynch	Roswell

Division VII	Gary Linn Clingman	Lovington
Division VIII	William P. "Chip" Johnson	Roswell

SIXTH JUDICIAL DISTRICT

GRANT, HIDALGO, LUNA COUNTIES

Division I	V. Lee Vesely	Silver City
Division II	Gary Jeffreys	Deming

SEVENTH JUDICIAL DISTRICT

CATRON, SIERRA, TORRANCE, SOCORRO COUNTIES

Division I	Edmund H. Kase III	Socorro
Division II	Thomas G. Fitch	Socorro
Division III	Neil Mertz	Socorro

EIGHTH JUDICIAL DISTRICT

COLFAX, UNION, TAOS COUNTIES

Division I	Peggy Jean Nelson	Taos
Division II	Sam B. Sanchez	Raton

NINTH JUDICIAL DISTRICT

CURRY & ROOSEVELT COUNTIES

Division I	Stephen Quinn	Clovis
Division II	Robert C. Brack	Clovis
Division III	David W. Bonem	Clovis, Portales

TENTH JUDICIAL DISTRICT

QUAY, DEBACA, HARDING COUNTIES

Division I	Ricky D. Purcell	Tucumcari

ELEVENTH JUDICIAL DISTRICT

MCKINLEY, SAN JUAN COUNTIES

Division I	William C. Birdsall	Aztec
Division II	Joseph L. Rich	Gallup
Division III	Wilfred Byron Caton	Aztec
Division IV	Paul R. Onuska	Farmington
Division V	Grant Foutz	Gallup
Division VI	George A. Harrison	Aztec

TWELFTH JUDICIAL DISTRICT

LINCOLN, OTERO COUNTIES

Division I	Jerry H. Ritter, Jr.	Alamogordo
Division II	Robert M. Doughty, II	Alamogordo
Division III	Karen L. Parsons	Carrizozo
Division IV	Frank K. Wilson	Alamogordo

THIRTEENTH JUDICIAL DISTRICT

SANDOVAL, VALENCIA, CIBOLA COUNTIES

Division I	John W. Pope	Los Lunas
Division II	Kenneth G. Brown	Bernalillo
Division III	William (Bill) Sanchez	Los Lunas
Division IV	Joseph F. Arite	Grants
Division V	Louis P. McDonald	Bernalillo

DISTRICT ATTORNEYS

First Judicial District	Henry R. Valdez	Santa Fe

Second Judicial District Jeff Romero Albuquerque

Third Judicial District Susana Martinez Las Cruces

Fourth Judicial District Matthew J. Sandoval Las Vegas

Fifth Judicial District Thomas A. Rutledge Carlsbad

Sixth Judicial District Jim Foy Silver City

Seventh Judicial District Ron P. Lopez Socorro

Eighth Judicial District John M. Paternoster Taos

Ninth Judicial District Randall M. Harris Clovis

Tenth Judicial District Patricia Parke Tucumcari

Eleventh Judicial District

Division I Sandra Price Farmington

Division II Forrest G. Buffington Gallup

Twelfth Judicial District Scot D. Key Alamogordo

Thirteenth Judicial District Michael Runnels Los Lunas

STATE SENATORS SERVING IN THE FORTY-THIRD LEGISLATURE

STATE OF NEW MEXICO

SECOND SESSION

CONVENED JANUARY 20, 1998

COUNTY DISTRICT NAME CITY

San Juan 1 Raymond L. Kysar (R) Farmington

San Juan 2 R. L. Stockard (R) Bloomfield

MCKINLEY & San Juan 3 John Pinto (D) Tohatchi

Cibola & MCKINLEY 4 Gloria Howes (D) Gallup

Los Alamos, Rio Arriba & Sandoval	5	Arthur H. Rodarte (D)	Ojo Caliente
Mora, Santa Fe & Taos	6	Carlos R. Cisneros (D)	Questa
Colfax, Curry, Harding, Quay,	7	Patrick H. Lyons (R)	Cuervo
San Miguel & Union			
DEBACA, Guadalupe, Lincoln,	8	Pete Campos (D)	Las Vegas
& San Miguel			
Bernalillo & Sandoval	9	Pauline Eisenstadt (D)	Corrales
Bernalillo	10	Ramsay L. Gorham (R)	Albuquerque
Bernalillo	11	Linda M. Lopez (D)	Albuquerque
Bernalillo	12	Richard M. Romero (D)	Albuquerque
Bernalillo	13	Dede Feldman (D)	Albuquerque
Bernalillo & Valencia	14	Manny M. Aragon (D)	Albuquerque
Bernalillo	15	L. Skip Vernon (R)	Albuquerque
Bernalillo	16	Cisco McSorley (D)	Albuquerque
Bernalillo	17	Shannon Robinson (D)	Albuquerque
Bernalillo	18	Mark L. Boitano (R)	Albuquerque
Bernalillo, Santa Fe & Torrance	19	Sue F. Wilson (R)	Albuquerque
Bernalillo	20	William Payne (R)	Albuquerque
Bernalillo	21	William F. Davis (R)	Albuquerque
Bernalillo, Los Alamos, MCKINLEY	22	Leonard Tsosie (D)	Crownpoint
Rio Arriba & Sandoval			
Bernalillo & Sandoval	23	Joseph J. Carraro (R)	Albuquerque
Santa Fe	24	Nancy Rodriguez (D)	Santa Fe

Santa Fe 25 Roman M. Maes III (D) Santa Fe

Bernalillo 26 Philip J. Maloof (D) Albuquerque

Chaves, Curry & Roosevelt 27 Stuart Ingle (R) Portales

Catron, Grant & Socorro 28 Ben D. Altamirano (D) Silver City

Valencia29 Michael S. Sanchez (D) Belen

Cibola, Socorro & Valencia 30 Joseph A. Fidel (D) Grants

Dona Ana 31 Cynthia Nava (D) Las Cruces

Chaves, Eddy & Otero 32 Timothy Z. Jennings (D) Roswell

Chaves & Eddy 33 Rod Adair (R) Roswell

Eddy, Lea & Otero 34 Melvin D. (Don) Kidd (R) Carlsbad

Dona Ana, Hidalgo, Luna & Sierra 35 John Arthur Smith (D) Deming

Dona Ana 36 Mary Jane M. Garcia (D) Dona Ana

Dona Ana, Otero & Sierra 37 Leonard Lee Rawson (R) Las Cruces

Dona Ana 38 Fernando R. Macias (D) Mesilla

STATE SENATORS (continued)

COUNTY DISTRICT NAMECITY

Bernalillo, Los Alamos, Sandoval, 39 Phil A. Griego (D)

San Jose

San Miguel, Santa Fe & Torrance

Otero 40 Dianna J. Duran (R) Tularosa

Eddy & Lea 41 Carroll H. Leavell (R) Jal

Curry, Lea & Roosevelt 42 Billy J. McKibben (R) Hobbs

STATE REPRESENTATIVES SERVING IN THE FORTY-THIRD LEGISLATURE

STATE OF NEW MEXICO

SECOND SESSION

CONVENED JANUARY 20, 1998

COUNTY	***DISTRICT***	***NAME***	***CITY***
San Juan	1	Jerry W. Sandel (D)	Farmington
San Juan	2	Thomas C. Taylor (R)	Farmington
Rio Arriba & San Juan	3	Sandra L. Townsend (R)	Aztec
San Juan	4	Ray Begaye (D)	Shiprock
MCKINLEY	5	Robert David Pederson (D)	Gallup
Cibola & MCKINLEY	6	George J. Hanosh (D)	Grants
Valencia	7	P. David Vickers (R)	Los Lunas
Valencia	8	Fred Luna(D)	Los Lunas
MCKINLEY & San Juan	9	Leo C. Watchman, Jr. (D)	Navajo
Bernalillo & Valencia	10	Henry "Kiki" Saavedra (D)	Albuquerque
Bernalillo	11	Rick Miera (D)	Albuquerque
Bernalillo	12	James G. Taylor (D)	Albuquerque
Bernalillo	13	Daniel P. Silva (D)	Albuquerque
Bernalillo	14	Miguel P. Garcia (D)	Albuquerque
Bernalillo	15	Raymond G. Sanchez (D)	Albuquerque
Bernalillo	16	Joe Nestor Chavez (D)	Albuquerque
Bernalillo	17	Edward C. Sandoval (D)	Albuquerque
Bernalillo	18	Gail C. Beam (D)	Albuquerque
Bernalillo	19	Sheryl M. Williams-Stapleton (D)	Albuquerque

District	Legislator	City
Bernalillo 20	Ted Hobbs (R)	Albuquerque
Bernalillo 21	Mimi Stewart (D)	Albuquerque
Bernalillo 22	Ron Godbey (R)	Albuquerque
Bernalillo 23	Robert Burpo (R)	Albuquerque
Bernalillo 24	George D. Buffett (R)	Albuquerque
Bernalillo 25	Danice R. Picraux (D)	Albuquerque
Bernalillo 26	Art Hawkins (R)	Albuquerque
Bernalillo 27	Lorenzo A. Larranaga (R)	Albuquerque
Bernalillo 28	Joseph P. Mohorovic (R)	Albuquerque
Bernalillo 29	Timothy E. Macko (R)	Albuquerque
Bernalillo 30	Pauline K. Gubbels (R)	Albuquerque
Bernalillo 31	Joseph M. Thompson (R)	Albuquerque
Dona Ana, Luna & Sierra 32	Dona G. Irwin (D)	Deming
Dona Ana 33	J. Paul Taylor (D)	Mesilla
Dona Ana 34	Mary Helen Garcia (D)	Las Cruces
Dona Ana 35	Benjamin B. Rios (D)	Las Cruces
Dona Ana 36	E. G. Smokey Blanton (R)	Las Cruces
Dona Ana 37	Jon "Andy" Kissner (R)	Las Cruces
Grant, Luna & Sierra38	F. Dianne Hamilton (R)	Silver City
Hidalgo & Grant 39	Manuel G. Herrera (D)	Bayard
Mora, Rio Arriba, San Miguel, 40	Nick L. Salazar (D)	San Juan Pueblo
Santa Fe & Taos		
Rio Arriba, Sandoval & Taos 41	Debbie A. Rodella (D)	San Juan Pueblo

COUNTY	DISTRICT	NAME	CITY
Taos	42	Roberto "Bobby" J. Gonzales (D)	Taos
Los Alamos & Sandoval	43	Jeannette Wallace (R)	Los Alamos

STATE REPRESENTATIVES (continued)

COUNTY	***DISTRICT***	***NAME***	***CITY***
Sandoval	44	Judy Vanderstar Russell (R)	Rio Rancho
Santa Fe	45	Patsy G. Trujillo Knauer (D)	Santa Fe
Santa Fe	46	Ben Lujan (D)	Santa Fe
Santa Fe	47	Max Coll (D)	Santa Fe
Santa Fe	48	Luciano "Lucky" Varela (D)	Santa Fe
Catron, Socorro, Sierra & Valencia	49	Don Tripp (R)	Socorro
Torrance, Bernalillo & Santa Fe	50	Rhonda S. King (D)	Stanley
Otero	51	Gloria Vaughn (R)	Alamogordo
Dona Ana	52	Delores C. Wright (D)	Chaparral
Otero	53	Terry T. Marquardt (R)	Alamogordo
Eddy	54	Joe M. Stell (D)	Carlsbad
Eddy	55	John A. Heaton (D)	Carlsbad
Lincoln, Chaves & Otero	56	W.C. "Dub" Williams (R)	Glencoe
Chaves, Eddy, Lea & Roosevelt	57	Daniel R. Foley (R)	Roswell
Chaves & Eddy	58	Dara A. Dana (R)	Dexter
Chaves	59	David M. Parsons (R)	Roswell
Sandoval	60	Lisa L. Lutz (R)	Rio Rancho
Lea	61	Donald L. Whitaker (D)	Eunice
Lea	62	Stevan E. Pearce (R)	Hobbs

Curry & Roosevelt 63 Mario Urioste (D) Clovis

Curry 64 Anna Marie Crook (R) Clovis

Bernalillo, Cibola & Sandoval 65 James Roger Madalena (D) Jemez Pueblo

Curry, Lea & Roosevelt 66 Earlene Roberts (R) Lovington

DEBACA, Harding, Quay, Union, 67 Bobbie K. Mallory (R) Tucumcari

Curry & Roosevelt

Colfax, Guadalupe, Mora 68 Jose R. Abeyta (D) Wagon Mound

& San Miguel

Cibola, MCKINLEY & Sandoval 69 W. Ken Martinez (D) Grants

San Miguel 70 Richard D. Vigil (D) Ribera

Secretary of State