Chapter 12

Miscellaneous Public Affairs Matters

Article 1

Compilation Commission

§ 12-1-1. Ratification of contract.

The contract entered, subject to approval of the New Mexico legislature, between The Michie Company of Charlottesville, Virginia, and the compilation commission on January 7, 1977, to publish a 1978 compilation of the New Mexico Statutes Annotated is hereby ratified and approved.

History: 1953 Comp., § 1-1-1, enacted by Laws 1977, ch. 74, § 1.

I. General Consideration.
II. 1865 Revision.
III. 1915 Codification.
IV. 1953 Compilation.

I. General Consideration.

Repeals and reenactments. - Laws 1977, ch. 74, § 1, repeals 1-1-1, 1953 Comp., relating to ratification of contract and contents and form of compilation, and enacts the above section.

Compiler's notes. - The 1978 NMSA is the tenth codification, revision or compilation of the laws of New Mexico since the "Kearny Code of Laws" of 1846. The Kearny Code, which with its accompanying Bill of Rights and congressional acts, was the basis of the New Mexico legal system until statehood, was prepared under Brigadier General Stephan W. Kearny's orders by Col. Alexander W. Doniphan and Pvt. Willard P. Hall, with assistance from Franklin P. Blair and Dr. David Waldo.

In 1854 the territorial legislature provided for a revision, correction and codification of the laws which was completed by Chief Justice James J. Deavenport in 1856 as the "Revised Statutes of the Territory of New Mexico."

The third revision was authorized by the legislature in 1859, and the commission

reported to that body in 1865. The 1865 revision was held to repeal all acts enacted prior thereto. See Tafoya v. Garcia, 1 N.M. 480 (1871), in the notes to this section. An unauthorized compilation following the plan of the 1865 Code was prepared by Chief Justice L. Bradford Prince in 1880.

A compilation of the laws was again authorized in 1884 and was prepared by three commissioners who published their work in 1885 under the title "Compiled Laws of New Mexico." The last territorial compilation was authorized and published in 1897 as the "Compiled Laws of New Mexico."

After New Mexico achieved statehood in 1912, a new compilation was planned. However, the New Mexico Statutes of 1915 was issued as a codification, in both English and Spanish, and was enacted into law by the legislature. The title of the act read "An act to codify the laws of the state of New Mexico." The enacting clause was: "Be it enacted by the legislature of the state of New Mexico:" after which was set out the body of the code, which became effective June 11, 1915. The repealing and saving clause of the 1915 codification read, in part: "This act shall not be considered as enacting or adopting any chapter heading, article heading, section heading, footnote, reference or citation. (See Code 1915, p. 1665; C.S. 1929, § 138-101; 1941 Comp., § 1-118).

The New Mexico Statutes of 1929 was a compilation authorized by Laws 1929, ch. 135, and was also translated into Spanish.

The 1941 Compilation was authorized by Laws 1941, ch. 191, which also created the 1941 compilation commission.

Laws 1953, ch. 39, § 1, authorized the 1953 Compilation, which was the last revision prior to NMSA 1978.

Effect of omission of law from NMSA 1978. - Since NMSA 1978 is a compilation, not a revision or codification, i.e., it is gathered from other books and documents, a failure to refer to an enacted law in NMSA 1978 would not diminish the applicability of that enacted law. Loesch v. Henderson, 103 N.M. 554, 710 P.2d 748 (Ct. App. 1985).

"Revised Statutes" means not merely the compilation or collecting together of existing statutes, but also the amendation or expurgation of such provisions as the revisors might deem unnecessary. Tafoya v. Garcia, 1 N.M. 480 (1871).

A revision of statutes implies one, or all of the following: (1) a reexamination of existing statutes; (2) a restatement of existing statutes in a corrected or improved form; (3) the restatement may or may not include material changes; (4) all parts and provisions of the former statute or statutes that are omitted are repealed; (5) the revision displaces and repeals the former law as it stood relating to the subject or subjects within its purview. City of Raton v. Sproule, 429 P.2d 336 (1967).

Reenactment of statute in substantially same language in which it was originally phrased constitutes the latter statute merely a continuation of the former. McLain v. Haley, 53 N.M. 327, 207 P.2d 1013 (1949); State v. Thompson, 37 N.M. 229, 20 P.2d 1030 (1933).

Where original language was reenacted on two separate occasions, statute was not to be deemed a new enactment as to so much of section as remained in its original form. Janney v. Fullroe, Inc., 47 N.M. 423, 144 P.2d 145 (1943).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 Am. Jur. 2d Statutes §§ 325 to 332.
Adoption of compiled or revised statutes as giving effect to former repealed or suspended provisions included therein, 12 A.L.R.2d 423.
82 C.J.S. Statutes §§ 271 to 277.

II. 1865 Revision.

Statutes not included impliedly repealed. - All statutes of a public nature enacted prior to 1864-65 legislature and not contained in the revised statutes adopted at that session were impliedly repealed by such omission. Tafoya v. Garcia, 1 N.M. 480 (1871).

Statutes construed as not mutually repugnant. - Provisions of 1865 Revised Statutes were considered as all reenacted on date of legislative adoption of the revision; all provisions touching the same subject matter were to be construed in such manner that one part not be repugnant to another. In re Watts, 1 N.M. 541 (1872).

Unless conflicting in practical operation. - Where sections dealing with same subject matter but enacted at different times were reenacted, on same day, as part of Revised Statutes of 1865, each section was in full force and effect unless the sections conflicted with each other in their practical operation. Gallegos v. Pino, 1 N.M. 410 (1867).

III. 1915 Codification.

Purpose in adopting. - In adopting the 1915 Codification, it was the purpose to continue all statutes in force so far as necessary to afford protection to parties who had initiated rights thereunder. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Existing statutes continued. - The sections embodied in the 1915 Codification were taken or adopted from existing statutes and were to be construed as continuations. Wells v. Dice, 33 N.M. 647, 275 P. 90 (1929).

Commenced prosecutions not affected. - Prosecution under 1897 Comp. Laws was not affected by repeal of that compilation and adoption of 1915 Codification where commenced prior to the repeal. State v. Coppinger, 21 N.M. 435, 155 P. 732 (1916).

Existing remedies and rules of evidence preserved. - All statutes omitted from the 1915 Codification were continued in force for the preservation of all remedies and rules of evidence existing by virtue of such statutes, insofar as they applied to a contract made, or a right initiated or an event which had happened prior to the adoption of the codification. Harris v. Friend, 24 N.M. 627, 175 P. 722 (1918).

Effect of repealing clause. - Repealing clause of 1915 Codification repealed only laws of a general and permanent nature not included in the codification. Scarbrough v. Wooten, 23 N.M. 616, 170 P. 743 (1918).

Pardon statute deemed unconstitutional until codification. - Pardon statute which was inoperative by reason of being unconstitutional at time of its adoption and at all times thereafter until codified in 1915 Codification became component part of laws of state by virtue of adoption of the 1915 Code. Ex parte Bustillos, 26 N.M. 449, 194 P. 886 (1920).

IV. 1953 Compilation.

The 1953 statutes annotated were a compilation. City of Albuquerque v. Campbell, 68 N.M. 75, 358 P.2d 698 (1960).

And not new enactment. - That nothing was intended as a new enactment is even clearer and more apparent in a compilation than in a codification such as the 1915 Codification. City of Albuquerque v. Campbell, 68 N.M. 75, 358 P.2d 698 (1960).

Headings not law. - The headings on each section of the statutes appearing in the 1953 statutes annotated are not part of the law. They were added by the editors and are merely descriptive and intended as aids in the use of the statutes. City of Albuquerque v. Campbell, 68 N.M. 75, 358 P.2d 698 (1960).

§ 12-1-2. [Compilation commission; creation.]

There is hereby established the New Mexico compilation commission. The commission shall consist of the chief justice of the supreme court of the state of New Mexico who shall act as president of the commission, the clerk of the supreme court of the state of New Mexico who shall act as secretary of the commission and the attorney general of the state of New Mexico.

History: 1941 Comp., § 1-120, enacted by Laws 1953, ch. 39, § 2; 1953 Comp., § 1-1-2.

§ 12-1-3. Powers and duties of commission.

The New Mexico compilation commission, acting through the secretary who shall obtain the advice and approval of an advisory committee appointed by the New Mexico supreme court, is hereby authorized:

A. to carry out the terms of the contract referred to and ratified in Section 12-1-1 NMSA 1978;

B. to provide for official, annotated compilations of the New Mexico statutes; to provide for supplements to such compilations; to determine the contents of such statutes; to determine the scope and extent of the annotations; to make such changes in the editorial provisions of the contract as may be deemed proper; to determine the physical arrangement, the size of volumes, the number of volumes and all other things pertaining to the publication of any compilation;

C. to determine whether the requirements for any compilation have been met; to determine whether such compilation contains the basic law and the general law of New Mexico; and to file a certificate with the secretary of state of New Mexico when the foregoing provisions have been met to the effect that such compilation shall be recognized as an official compilation of the statutory law of New Mexico;

D. to provide for the sale of any compilation and the supplements thereto;

E. to provide for exchange of compilations and supplements with exchange libraries of other states and territories;

F. to contract with the publisher of any compilation as may be necessary or desirable to carry out the provisions of this section; and

G. to do all things necessary to keep a current computer data base of publications published by the compilation commission and parallel tables prepared by the commission for computerized search and manipulation.

History: 1953 Comp., § 1-1-3, enacted by Laws 1977, ch. 74, § 2; 1979, ch. 106, § 4.

Repeals and reenactments. - Laws 1977, ch. 74, § 2, repealed a former 1-1-3, 1953 Comp., relating to powers and duties of compilation commission, and enacted a new 1-1-3, 1953 Comp.

§ 12-1-3.1. Additional powers and duties of commission.

The New Mexico compilation commission, acting through the secretary of the commission, is hereby authorized to publish, distribute or sell and keep current

automated legal data bases of the following legal publications, including any revisions:

A. New Mexico reports;

B. New Mexico municipal benchbook;

C. New Mexico magistrate benchbook;

D. New Mexico juvenile probation officers manual;

E. advance opinions, compliance guides and informational pamphlets issued by the attorney general of New Mexico;

F. indices of attorney general opinions; and

G. parallel tables of New Mexico laws.

History: 1978 Comp., § 12-1-3.1, enacted by Laws 1982, ch. 7, § 2.

§ 12-1-4. Distribution.

A. The secretary of the New Mexico compilation commission shall distribute any compilation, replacement volume or replacement pamphlet to all state, county and district officers designated by the New Mexico compilation commission to receive the same. No less than one hundred sixty sets of the compilation shall be assigned to the New Mexico legislature by the commission. The costs of annual supplements and replacement indexes shall be paid by state, county and district officers who have been assigned sets of the compilation. Money received by the New Mexico compilation commission from the sale of annual supplements and replacement indexes shall be deposited in the New Mexico compilation fund. Compilations and supplements distributed by the commission shall be stamped the property of New Mexico and shall remain the property of the state.

B. Each officer receiving any compilation or the supplements thereto shall sign a receipt for the same and shall turn the same over to his successor in office or return the same to the office of the secretary of the New Mexico compilation commission for redistribution. Failure to return same after written demand therefor shall entitle the state to recover the replacement cost of a new set as liquidated damages therefor from said officer.

C. Sets of compilations and the supplements thereto shall be delivered to officers receiving the same at the office of the secretary of the New Mexico compilation commission in Santa Fe or transmitted c.o.d. to them at their request. The secretary of the New Mexico compilation commission shall keep on file receipts for all compilations so distributed. Any compilations remaining undistributed or unsold shall be safely

preserved by the secretary of the New Mexico compilation commission for future requirements of the state.

D. Whenever it is necessary to replace a volume of any compilation due to loss of the original volume, a fee shall be charged the receiving officer by the secretary to cover all costs of the replacement volume.

History: 1941 Comp., § 1-122, enacted by Laws 1953, ch. 39, § 4; 1953 Comp., § 1-1-4; Laws 1969, ch. 277, § 1; 1973, ch. 202, § 1; 1977, ch. 74, § 3; 1978, ch. 130, § 1.

Commission not required to designate recipients. - Under this section the commission may designate such qualified officers as the members of the commission feel may be entitled to receive the compilation, but the commission is not required to designate any recipients unless it so desires. 1969 Op. Att'y Gen. No. 69-120.

No restriction on designation if qualified. - This section places no restriction on which officers may be designated as recipients of the compilation, so long as they qualify as state, county or district officers. 1969 Op. Att'y Gen. No. 69-120.

Commission determines number of volumes furnished. - The commission may furnish the designated recipients with as many volumes of the compilation as may be deemed prudent in the commission's judgment. 1969 Op. Att'y Gen. No. 69-120.

§ 12-1-5. [Compilation fund; establishment.]

There is hereby established in the state treasury a fund to be known as the New Mexico compilation fund.

History: 1941 Comp., § 1-123, enacted by Laws 1953, ch. 39, § 5; 1953 Comp., § 1-1-5.

§ 12-1-6. [Compilation fund; contents.]

A. All money remaining unexpended or uncommitted in the 1941 compilation fund as of July 1, 1953, is hereby transferred to the New Mexico compilation fund.

B. The sum of $40,000.00 is hereby transferred from the New Mexico digest fund to the New Mexico compilation fund.

C. All money received by the compilation commission from the sale of any compilation or the supplements thereto shall be paid into the state treasury and credited to the New Mexico compilation fund.

History: 1941 Comp., § 1-124, enacted by Laws 1953, ch. 39, § 6; 1953 Comp., § 1-1-6.

Sale proceeds only paid into compilation fund. - While this section does not, in terms, create a revolving fund, it nonetheless expressly requires all proceeds of sales of any compilation or supplements to go into the compilation fund, negating placing the sale proceeds in any other fund, the general fund included. 1957-58 Op. Att'y Gen. No. 58-134.

§ 12-1-7. Recognition as official compilation.

Upon the certification of said compilation of 1978 or any supplement thereof, by the New Mexico compilation commission acting through the secretary of the New Mexico compilation commission, with the advice and approval of the advisory committee of the supreme court as herein authorized and directed, such compilation or supplement shall be in force, and printed copies thereof shall be received, recognized, referred to and used in all the courts and in all departments and offices of the state as the official compilation of the statutory law of New Mexico and may be cited as the "NMSA 1978."

History: 1941 Comp., § 1-125, enacted by Laws 1953, ch. 39, § 7; 1953 Comp., § 1-1-7; Laws 1977, ch. 74, § 4.

Effect of omission of law from NMSA 1978. - Since NMSA 1978 is a compilation, not a revision or codification, i.e., it is gathered from other books and documents, a failure to refer to an enacted law in NMSA 1978 would not diminish the applicability of that enacted law. Loesch v. Henderson, 103 N.M. 554, 710 P.2d 748 (Ct. App. 1985).

§ 12-1-8. Rules of construction governing compilation of statutes.

In carrying out the duties provided by law and contract, absent an expressed contrary legislative intent, the secretary of the New Mexico compilation commission and the advisory committee of the supreme court shall be governed by the following rules:

A. if two or more acts are enacted during the same session of the legislature amending the same section of the NMSA, regardless of the effective date of the acts, the act last signed by the governor shall be presumed to be the law and shall be compiled in the NMSA. The history following the amended section shall set forth the section, chapter and year of all acts amending the section. A compiler's note shall be included in the annotations setting forth the nature of the difference between the acts or sections; and

B. if two or more irreconcilable acts dealing with the same subject matter are enacted by the same session of the legislature, the last act signed by the governor shall be presumed to be the law. The act last signed by the governor shall be compiled in the NMSA with an annotation following the compiled section setting forth in full the text of the conflicting acts.

History: 1953 Comp., § 1-1-7.1, enacted by Laws 1977, ch. 74, § 5.

This section applies rules of construction governing the compilation of statutes: all rules of statutory construction are but aids in arriving at the true legislative intent. Quintana v. New Mexico Dep't of Cors., 100 N.M. 224, 668 P.2d 1101 (1983).

Repeal of section blocks later amendment of same section by same legislature. - Where two acts are enacted during the same session of the legislature, and the earlier act repeals an existing law while the later act amends that law, the later act cannot be given effect because the earlier act repealed the law which the later act purported to amend. Quintana v. New Mexico Dep't of Cors., 100 N.M. 224, 668 P.2d 1101 (1983).

§ 12-1-9. Fee levy on actions filed.

Each district court clerk shall indicate the sum of twelve dollars ($12.00) from each civil case docket fee paid in the district court for credit to the New Mexico compilation fund, no part of which shall revert at the end of any fiscal year. Vouchers for expenditures from the fund shall be signed by the secretary of the New Mexico compilation commission.

History: 1978 Comp., § 12-1-9, enacted by Laws 1982, ch. 7, § 3.

Repeals and reenactments. - Laws 1982, ch. 7, § 3, repeals former 12-1-9 NMSA 1978, relating to fee levy on actions filed, and enacts the above section.

Fee deemed tax, not cost. - Charge levied under Laws 1929, ch. 135, § 10 (similar to this section), upon court actions, was a tax and not costs, and could not be awarded to the successful litigant, but had to be forwarded to the state treasurer. It referred to civil actions only. 1929-30 Op. Att'y Gen. No. 44.

Fee held an additional fee. - See 1957-58 Op. Att'y Gen. No. 57-135.

Fee included in filing fees for appeal to district courts. - Under former law, the proper filing fee chargeable for docketing appeals in the district courts from civil cases tried in the justice of the peace courts (now magistrate courts) included the $5.00 specified in 34-6-40 NMSA 1978 and the $1.25 (now $12) called for in this section. 1970 Op. Att'y Gen. No. 70-65, 1964 Op. Att'y Gen. No. 64-50, 1961-62 Op. Att'y Gen. Nos. 61-74, 61-105.

And also included in appeals from municipal courts. - See 1970 Op. Att'y Gen. No. 70-65.

Appeals to which fee applicable. - The compilation fund docket fee required by this section would be applicable to appeals from the municipal court to the district court. 1980 Op. Att'y Gen. No. 80-18.

When fee not collectable. - The $1.25 (now $12) fee levied on civil actions "upon which a docket fee is now required to be paid" by this section's predecessor could not be collected in the following types of cases:

(1) free process cases;

(2) suits by federal agencies upon which a docket fee is required to be paid;

(3) tax petitions filed under Laws 1939, ch. 139, § 1 (since repealed), and approved by the district attorney;

(4) tax petitions filed under Laws 1939, ch. 212 (72-7-30, 1953 Comp. since repealed); and

(5) workmen's compensation cases.

It should be collected on all other civil actions docketed in district court including appeals from justice and probate courts. 1941-42 Op. Att'y Gen. No. 3927.

§ 12-1-10. Applicability [of increased fee].

The increased fee levied by this act [12-1-9, 12-1-10 NMSA 1978] shall apply to all actions filed on or after July 1, 1967.

History: 1953 Comp., § 1-1-8.1, enacted by Laws 1967, ch. 222, § 2.

Appeals to which fee applicable. - A docket fee is applicable to appeals from municipal court to district court only when brought from an action enforcing ordinances under 35-15-1 NMSA 1978 et seq.; moreover, the compilation fund docket fee required by 12-1-9 NMSA 1978 would be applicable to such actions as well. 1980 Op. Att'y Gen. No. 80-18.

§ 12-1-11. Issuance of debentures.

The New Mexico compilation commission is authorized to anticipate the proceeds of the collection of any or all of the taxes or fees on civil actions hereinabove provided for by the issuance and sale of New Mexico compilation commission debentures, in such amounts not to exceed outstanding at any one time, the sum of two hundred thousand dollars ($200,000), issuable at such times and bearing such rate of interest, not exceeding four percent (4%) per annum, as the commission may determine. The debentures may be issued in serial form and shall mature at stated periods not exceeding ten (10) years from the date of issuance. The debentures shall be, signed by the president of the commission, attested by its secretary, countersigned by the treasurer of the state of New Mexico, and in such form as may be provided by the attorney general.

History: 1941 Comp., § 1-127, enacted by Laws 1953, ch. 39, § 10; 1953 Comp., § 1-1-10; Laws 1961, ch. 140, § 1.

§ 12-1-12. [Sale of debentures.]

Said debentures shall be sold by the state treasurer to the highest bidder for cash at not less than par and accrued interest at such times and in such amounts as may be determined by the New Mexico compilation commission, after advertising the time and place of sale in such manner as the commission may determine. Provided, however, that said debentures or any part thereof may be sold by the state treasurer at any time at private sale without advertisement for not less than par and accrued interest. The state treasurer may, with the approval of the state board of finance, and other officials whose approval is required by law for investment of public funds, purchase any or all of such debentures at not less than par and accrued interest without the necessity of advertising or offering said debentures for public sale or after rejection of bids for all or part of any issue.

History: 1941 Comp., § 1-128, enacted by Laws 1953, ch. 39, § 11; 1953 Comp., § 1-1-11.

§ 12-1-13. [Pledge of fees levied.]

The issuance and sale of such debentures shall constitute and be an irrevocable and irrepealable contract between the state of New Mexico and the owner of any said debentures, that the taxes or fees pledged for the payment thereof at the rate now provided by this act shall not be reduced as long as any of said debentures remain outstanding, and unpaid, and that the state will cause said taxes and fees to be promptly collected, remitted and set aside and applied to pay said debentures, and the interest thereon according to the terms thereof. Any holder of any of the debentures issued pursuant to the provisions of this act, or any person or officer being a party in interest may, either at law or in equity, by suit, action or mandamus, enforce and compel the performance of the duties required by this act of any officer or person herein mentioned.

History: 1941 Comp., § 1-129, enacted by Laws 1953, ch. 39, § 12; 1953 Comp., § 1-1-12.

Meaning of "this act". - The words "this act" refer to Laws 1953, ch. 39, the compiled provisions of which appear as 12-1-2, 12-1-4 to 12-1-7, and 12-1-11 to 12-1-14 NMSA 1978.

When all fees are within terms of contract and pledge. - See 1957-58 Op. Att'y Gen. No. 55-134.

§ 12-1-14. Proceeds from sale of debentures.

The proceeds of the sale of said debentures shall be placed to the credit of the New Mexico compilation fund, except such amount as may have been paid as accrued interest, which amount shall be credited to a special interest fund for payment of interest on such debentures. The expenses incurred by the state treasurer in the preparation and sale of said debentures shall be paid out of said compilation fund. The proceeds from said debentures shall be used exclusively for the purposes for which said indebtedness is authorized and shall be paid out on warrants drawn by the secretary of finance and administration supported by vouchers of the New Mexico compilation commission. The state treasurer shall keep separate accounts for all moneys collected from the taxes or fees hereby imposed for the payment of the interest and to provide a sinking fund for said debentures respectively, and may from time to time invest the moneys in said sinking fund in any bonds or other securities issued by the United States of America or the state of New Mexico at their market value, provided, such bonds or other securities will mature before the maturity date of the debentures for which the sinking fund is created.

History: 1941 Comp., § 1-130, enacted by Laws 1953, ch. 39, § 13; 1953 Comp., § 1-1-13; Laws 1977, ch. 247, § 8.

Article 2

Statutory Construction

§ 12-2-1. [Original act to govern.]

In all cases where there exists a difference between law as published and the original on file in the office of the secretary of state, it shall be determined by the original and not as published.

History: Laws 1865-1866, p. 192, § 4; C.L. 1884, § 2610; C.L. 1897, § 3784; Code 1915, § 5423; C.S. 1929, § 139-101; 1941 Comp., § 1-201; 1953 Comp., § 1-2-1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 Am. Jur. 2d Statutes § 90.
82 C.J.S. Statutes § 63.

§ 12-2-2. Rules of construction.

In the construction of constitutional and statutory provisions, the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the constitutional provision or statute:

A. words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed according to such meaning;

B. words importing the singular number may be extended to several persons or things, words importing the plural number may be applied to one person or thing and words importing the masculine gender only may be extended to females;

C. words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them unless otherwise expressed in the act giving them authority;

D. the word "oath" includes "affirmation" in all cases where an affirmation may be substituted for an oath, and in like cases "swear" includes "affirm";

E. the word "person" may be extended to firms, associations and corporations;

F. the words "written" and "in writing" may include printing, engraving or any other mode of representing words and letters except where the written signature or mark of any person is required;

G. in computing time, the first day shall be excluded and the last included unless the last falls on Sunday, in which case, the time prescribed shall be extended to include the whole of the following Monday;

H. in computing the time that a legislative session shall end, the word "day" means a twenty-four-hour period from 12:00 o'clock noon on one calendar day to 12:00 o'clock noon on the next;

I. the words "shall" and "will" are mandatory and "may" is permissive or directory;

J. the word "annually" means "per year"; and

K. a person reaches his "age of majority" on the first instant of his eighteenth birthday.

History: Laws 1880, ch. 6, § 32; C.L. 1884, § 1851; C.L. 1897, § 2900; Code 1915, § 5424; C.S. 1929, § 139-102; 1941 Comp., § 1-202; 1953 Comp., § 1-2-2; Laws 1965, ch. 110, § 1; 1969, ch. 132, § 1; 1973, ch. 138, § 1.

I. General Consideration.
II. Interpretation of Constitution.
III. Constitutionality.

I. General Consideration.

Cross-references. - As to definition of punishment by imprisonment in penal statutes, see 31-21-1 NMSA 1978.

The powers of the legislature extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; and writs of error, bills of exception and appeals are in all cases from final decisions of the district courts under such regulations as may be prescribed by law; while the judicial power is vested in the supreme, district and probate courts and in justices of the peace (now magistrate courts), and the supreme and district courts possess chancery and common-law jurisdiction, but all laws must be submitted to congress (under territorial status), and if disapproved, shall be null and void. These constitutional provisions by organic acts establish the power of the legislative assembly and the governor to pass laws regulating

writs of error, bills of exception and appeals for the removal of causes from the district courts to the supreme court as rightful subjects of legislation, and congress has not disapproved its exercise; and the chancery and common-law jurisdiction conferred on the supreme and district courts by these acts of congress is coextensive with the great power of the legislature to enact laws within the prescribed limits. United States v. Gwyn, 4 N.M. (Gild.) 635, 42 P. 167 (1888).

This section provides a general rule of construction. Woodcock v. Cochran, 21 N.M. 76, 153 P. 273 (1915).

Construction is issue of law. - Where the question is simply one of construction, the courts may pass upon it as an issue "solely of law." Pan Am. Petroleum Corp. v. El Paso Natural Gas Co., 77 N.M. 481, 424 P.2d 397 (1966).

Rules of construction to resolve not create ambiguity. - Techniques in aid of construction of a statute are used to resolve an ambiguity, not to create one. Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 472 P.2d 973 (1970).

Rules not inconsistent with intent. - If there be doubt as to a statute's construction, courts are permitted to interpret, to arrive at the intention of the legislature, but rules or canons of construction are not to be invoked to arrive at a construction inconsistent with clear intent. State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970).

All rules of statutory construction are but aids in arriving at the true legislative intent and should never be used to override same where it otherwise plainly appears. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 70 N.M. 226, 372 P.2d 808 (1962).

Statute construed to make whole act consistent. - In statutory construction, the inquiry is to determine what particular words, clauses or provisions mean and to determine the legislative intent. Statutes are enacted as a whole and each part should be construed in connection with every other part to ascertain the intent, and where a comparison of one clause with the statute as a whole makes a meaning clear the act must be so construed as to make the whole consistent. Reed v. Styron, 69 N.M. 262, 365 P.2d 912 (1961).

If meaning of statute doubtful, consequences are considered in construction. 1953-54 Op. Att'y Gen. No. 5878.

When damages recovered for violation of statute. - Violation of a statute constitutes negligence per se and when, as a proximate result thereof, a person is injured, damages may be recovered if the statutory provision violated was for the benefit of the person injured. Hayes v. Hagemeier, 75 N.M. 70, 400 P.2d 945 (1963).

Public policy with respect to community property. - The state's public policy on the subject of community property is expressed in the statutes, interpreted in the light of the Spanish-Mexican law. Wiggins v. Rush, 83 N.M. 133, 489 P.2d 641 (1971).

When power conferred, rights to effect are implied. - It is a fundamental rule of construction that when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied. Kennecott Copper Corp. v. Employment Sec. Comm'n, 78 N.M. 398, 432 P.2d 109 (1967).

When power not granted is implied. - A power not expressly granted is implied only where it is necessary to carry into effect powers expressly granted. Kennecott Copper Corp. v. Employment Sec. Comm'n, 78 N.M. 398, 432 P.2d 109 (1967).

Rule of employment security commission construed same as statute. - Rule legally promulgated by employment security commission has the same force as a statute and is therefore subject to the same construction. 1947-48 Op. Att'y Gen. No. 5115.

Law reviews. - For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).

For article, "Intestate Succession and Wills Law: The New Probate Code," see 6 N.M. L. Rev. 25 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 Am. Jur. 2d Statutes § 142 et seq.; 74 Am. Jur. 2d Time §§ 15, 16.
Supplying omitted words in statute, 3 A.L.R. 404; 126 A.L.R. 1325.
"Devise" or "devisee" in statute as including "legacy" or "legatee," or vice versa, 4 A.L.R. 246.
Statute requiring filing of formal notice of lis pendens in certain classes of cases as affecting common-law doctrine of lis pendens in other cases, 10 A.L.R. 306.
Meaning of "by" as fixing time for performance of an act or happening of an event, 12 A.L.R. 1168; 21 A.L.R. 1543.
Effect of mistake in reference in statute to another statute, constitution, public document, record or the like, 14 A.L.R. 274.
Retroactive effect of statute in relation to presentation of notice of claim for personal injury against municipality, 14 A.L.R. 710.
"Until" as word of inclusion or exclusion, 16 A.L.R. 1094.
"Similar," construed, 17 A.L.R. 94.
Act done on same day as, but before another act or event, as satisfying a statutory requirement that the former must precede the latter, 21 A.L.R. 1216.
Title of statutes as an element bearing upon their construction, 37 A.L.R. 927.
Retroactive effect of provision for reduction or increase of award under workmen's compensation law, 40 A.L.R. 1473.
Signing or endorsing bill or note by printing or stamping, 46 A.L.R. 1498.
Declaratory judgment construing statute, 50 A.L.R. 42; 68 A.L.R. 110; 87 A.L.R. 1205; 114 A.L.R. 1361.
Implied abrogation of state's prerogative right of preference at common law, 51 A.L.R. 1355; 65 A.L.R. 1331; 90 A.L.R. 184; 167 A.L.R. 640.
Computation of time allowed for approval or disapproval of bill by governor, 54 A.L.R. 339.

Resort to constitutional or legislative debates, committee reports and journals as aid in construction of statute, 70 A.L.R. 5.
Amendments as aid in construction of statute, 70 A.L.R. 22.
Inclusion of Sunday in computation of time within which bill must be presented to governor, 71 A.L.R. 1363.
Stipulation of parties as to construction and effect of statute, 92 A.L.R. 663.
"And/or," 118 A.L.R. 1367; 154 A.L.R. 866.
Retroactive application of repeal of statute which operated as limitation of or exception to a substantive right of action in tort otherwise arising at common law, 120 A.L.R. 943.
Inclusion or exclusion of first or last day in computing period of time prescribed by insurance contract, 137 A.L.R. 1155.
Construction and application of statutory and constitutional provisions exempting property of persons in military service, or formerly in such service, from taxation, 149 A.L.R. 1485.
Removal or suspension of constitutional limitation as affecting construction of statute previously enacted, 171 A.L.R. 1070.
Constitutional requirement that repealing or amendatory statute refer to statute repealed or amended, to repeal or amendment by implication, 5 A.L.R.2d 1270.
Meaning of term "radius" employed in statute as descriptive area, location or distance, 10 A.L.R.2d 605.
Construction of statute limiting damages recoverable for defamation to avoid unconstitutionality, 13 A.L.R.2d 285.
Conflicting statutory provisions as to persons upon whom notice of injury or claim against municipal corporation may or must be served, 23 A.L.R.2d 987.
General principles of interpretation of Uniform Judicial Notice of Foreign Law Act, 23 A.L.R.2d 1440.
Strict or liberal construction of statute making insanity substantive ground of divorce and separation, 24 A.L.R.2d 877.
Simultaneous repeal and reenactment of all, or part, of legislative act, 77 A.L.R.2d 336.
What 12-month period constitutes "year" or "calendar year" as used in public enactment, contract or other written instrument, 5 A.L.R.3d 584.
Strict or liberal construction of zoning provision as to resumption of nonconforming use after period of nonuse or of a different use from that in effect at or before the time of zoning, 56 A.L.R.3d 14; 57 A.L.R.3d 279.
82 C.J.S. Statutes §§ 330, 337, 338, 358; 86 C.J.S. Time § 13(1).

II. Interpretation of Constitution.

Usual principles governing construction of statutes apply also to interpretation of constitutions. State ex rel. State Hwy. Comm'n v. City of Aztec, 77 N.M. 524, 424 P.2d 801 (1967).

But no interpretation when provision is clear and unambiguous. - When a constitutional provision is clear and unambiguous, it is not subject to interpretation or construction by this court. State ex rel. Sage v. Montoya, 65 N.M. 416, 338 P.2d 1051 (1959).

Intent arrived at from vantage point of framers. - What the framers of the constitution intended as disclosed by the language employed is, of course, the interpretation properly to be given the instrument. That intent must be arrived at by construing together its various pertinent provisions and giving to each the meaning which its language most naturally suggests when considered in proper relationship to the others. We should, as nearly as we may, endeavor to look at the instrument from the vantage point of the framers the better to understand their view of the matter and the meaning likely intended. Whenever we refer to the framers that term is to be taken as embracing the people who adopted it. We are not unmindful of the rule of construction applicable to a constitution that its language is to be taken in its common and ordinary sense and as likely understood by the people who adopted it. State ex rel. Witt v. State Canvassing Bd., 78 N.M. 682, 437 P.2d 143 (1968).

Intent controls literal application of language when result incongruous. - The supreme court is limited to determining the intention of those who adopted the constitution, and where the spirit and intent is clearly ascertainable as contrary to the strict letter of the language and literal application would lead to an incongruous result, it should not be permitted to control. State ex rel. Chavez v. Evans, 79 N.M. 578, 446 P.2d 445 (1968).

But no construction when intention clear. - The constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition. 1959-60 Op. Att'y Gen. No. 60-205.

Purpose and scope of constitutional provision must be considered. - Canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless included by the clearest implication is but a rule of construction and consideration must be given to the purpose and scope of the constitutional provision (here N.M. Const., art. IX, § 12) involved. State ex rel. State Hwy. Comm'n v. City of Aztec, 77 N.M. 524, 424 P.2d 801 (1967).

Duty of court to declare intent of amendment. - It is the duty of this court to search out and declare the true meaning and intent of any constitutional amendment adopted by the people, and this duty is no different in considering the constitution itself. State ex rel. Chavez v. Evans, 79 N.M. 578, 446 P.2d 445 (1968).

Amendments valid unless illegal beyond reasonable doubt. - Whenever a constitutional amendment is attacked as not constitutionally adopted, the question presented is, not whether it is possible to condemn, but whether it is possible to uphold; every reasonable presumption, both of law and fact, is to be indulged in favor of the legality of the

amendment, which will not be overthrown, unless illegality appears beyond a reasonable doubt. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

Supplementary legislation may supply details to constitutional provisions. - Although a self-executing constitutional provision has full force on its own, the legislature may protect or further it through supplementary legislation. That is to say, a legislature may supply details relative to the constitutional provision. 1961-62 Op. Att'y Gen. No. 62-149.

The constitution must be construed as a whole and the court held that the two sections, N.M. Const., art. V, § 3 and art. VII, § 2, should be read together, thereby requiring that a person in order to hold the office of governor must be a citizen of the United States, at least 30 years of age, who has been a resident continuously for five years preceding his election and who is a qualified elector in New Mexico. State ex rel. Chavez v. Evans, 79 N.M. 578, 446 P.2d 445 (1968).

Liberal construction of certain provisions. - Constitutional provision (N.M. Const., art. XIX, § 1) that electors be enabled to vote on amendments separately should receive a liberal, rather than a narrow or technical construction, especially where the legislature obviously considered the problem carefully, and the amendment has been submitted to the people for their vote thereon. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

III. Constitutionality.

Constitutional limitations are sole restraints upon legislature's prerogatives. - The legislature's prerogative in the matter of legislation is to be questioned solely from the standpoint of our federal or state constitutional limitations. The function of the courts in scrutinizing acts of the legislature is not to raise possible doubt nor to listen to captious criticism. The legislature possessing the sole power of enacting law, it will not be presumed that the people have intended to limit its power or practice by unreasonable or arbitrary restrictions. Every presumption is ordinarily to be indulged in favor of the validity and regularity of legislative acts and procedure. State ex rel. Holmes v. State Bd. of Fin., 69 N.M. 430, 367 P.2d 925 (1961).

Presumption that legislature kept within bounds of constitution. - In determining the constitutionality of an act of the legislature, the presumption is that the legislature has performed its duty and kept within the bounds fixed by the constitution, and that the judiciary will, if possible, give effect to the legislative intent, unless it clearly appears to be in conflict with the constitution. Seidenberg v. New Mexico Bd. of Medical Exmrs., 80 N.M. 135, 452 P.2d 469 (1969).

Policy of court to construe statutes in light of presumed constitutionality. - It is the policy of this court to construe statutes in the light that they are presumed constitutional rather

than unconstitutional. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

Every presumption favoring constitutionality indulged. - In passing on issues of constitutionality of statutes the court must indulge every presumption in favor of validity of the enactment. Board of Dirs. of Mem. Gen. Hosp. v. County Indigent Hosp. Claims Bd., 77 N.M. 475, 423 P.2d 994 (1967).

Statute should be construed so as to avoid conflict with constitution and give effect to statute whenever possible; all doubts should be resolved in favor of constitutionality of statute. State ex rel. Sedillo v. Sargent, 24 N.M. 333, 171 P. 790 (1918).

Unless no other conclusion reasonable acts not unconstitutional. - Legislative acts should not be held unconstitutional unless no other conclusion can reasonably be reached and all doubts must be resolved in favor of constitutionality. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

In any event, doubt is resolved in favor of constitutionality of statutes. Daniels v. Watson, 75 N.M. 661, 410 P.2d 193 (1966).

Unconstitutionality must be proven beyond all reasonable doubt. - A statute will not be declared unconstitutional unless the court is satisfied beyond all reasonable doubt that the legislature went outside the constitution in enacting the challenged legislation. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

When two constructions, court adopts constitutional one. - When a statute is before the court for construction, and the language of the act is reasonably susceptible to two constructions, one of which would render the act inoperative and in contravention of the constitution or law of the land, and the other would uphold the statute, it is the duty of the court to adopt the latter construction. 1953-54 Op. Att'y Gen. No. 5878.

Constitutional provisions must receive a reasonable and liberal construction to uphold the acts of the legislature to the extent that this can be done. 1957-58 Op. Att'y Gen. No. 58-85.

Fundamental law that statutes and regulations construed to make constitutional. - It is fundamental law that the courts will construe a statute, and for that matter a regulation, so as to make it constitutional and valid. 1961-62 Op. Att'y Gen. No. 61-85.

IV. Partial Invalidity.

When valid portion of partially invalid statute remains in force. - A part of the law may be unconstitutional and the remainder of it valid, where the objectionable part may be properly separated from the other without impairing the force and effect of the portion

which remains, and where the legislative purpose as expressed in such valid portion can be accomplished and given effect, independently of the void provisions, and where if the entire act is taken into consideration it cannot be said that the enacting power would not have passed the portion retained had it known that the void provisions must fall. Barber's Super Mkts., Inc. v. City of Grants, 80 N.M. 533, 458 P.2d 785 (1969).

Before a partially invalid statute can be held to still be in force it must satisfy three tests: first, the invalid portion must be able to be separated from the other portions without impairing their effect; second, the legislative purpose expressed in the valid portion of the act must be able to be given effect without the invalid portion; and, thirdly, it cannot be said, on a consideration of the whole act, that the legislature would not have passed the valid part if it had known that the objectionable part was invalid. State v. Spearman, 84 N.M. 366, 503 P.2d 649 (Ct. App. 1972).

Interdependence of both valid and invalid provisions is controlling factor. - The invalidity of a portion of a legislative enactment does not operate to invalidate those portions of the act which are free from objection unless there is such interdependence of all provisions so as to make it reasonably certain that absent the part determined to be invalid, the legislature would not have enacted the valid portion. Clovis Nat'l Bank v. Callaway, 69 N.M. 119, 364 P.2d 748 (1961).

Where saving clause used valid portion given effect, if possible. - Where a section has been incorporated expressly stating the legislative intent that the valid portion of the enactment should stand even though other parts may be determined to be invalid, there can be no question of legislative intent and if possible the portion of the legislation free from objection should be given effect. Clovis Nat'l Bank v. Callaway, 69 N.M. 119, 364 P.2d 748 (1961).

V. Intent of Legislature.

The fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. State v. Chavez, 77 N.M. 79, 419 P.2d 456 (1966).

The supreme court will construe a statute to give it its intended effect. New Mexico State Hwy. Comm'n v. Ferguson, 98 N.M. 680, 652 P.2d 230 (1982).

Courts must interpret a statute so as to accomplish the ends sought by the legislature. de Baca v. Baca, 73 N.M. 387, 388 P.2d 392 (1964).

In construing a statute, a court must do so with the ultimate purpose of ascertaining and giving effect to the manifest intent of the legislature. Wells v. County of Valencia, 98 N.M. 3, 644 P.2d 517 (1982).

Intent determined from language of statute. - Where there is ambiguity, interpretation is required, but that interpretation is for the purpose of determining legislative intent when it is to be determined primarily from the language used in the statute. State v. McHorse, 85 N.M. 753, 517 P.2d 75 (Ct. App. 1973).

The controlling consideration in construing a statute is ascertainment of the legislative intent, and such legislative intent is determined primarily from the language actually contained in the statute. 1961-62 Op. Att'y Gen. No. 62-65.

When language plain, intention expressed given effect. - The intention, of course, must be the intention expressed in the statute, and where the meaning of the language employed is plain, it must be given effect. State v. Ortiz, 78 N.M. 507, 433 P.2d 92 (Ct. App. 1967).

Words given ordinary meaning unless intent indicates otherwise. - The court must view the legislative intent from the language of the act and the words will be given their ordinary meaning unless a different intent is clearly indicated. Davis v. Commissioner of Revenue, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971).

When words are added, rejected or substituted. - Courts will not add words except where necessary to make the statute conform to the obvious intent of the legislature, or to prevent its being absurd but where the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others. State v. Nance, 77 N.M. 39, 419 P.2d 242 (1966), cert. denied, 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605 (1967).

When words are transposed. - Words and phrases of statute may be transposed to carry out manifest intent of act. State ex rel. Dresden v. District Court, 45 N.M. 119, 112 P.2d 506 (1941).

Construction not to be absurd, literal interpretation yields to intent. - The legislative intent must be given effect by adopting a construction which will not render the statute's application absurd or unreasonable and the court will not be bound by a literal interpretation of the words if such strict interpretation would defeat the intended object of the legislature. State v. Nance, 77 N.M. 39, 419 P.2d 242 (1966), cert. denied, 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605 (1967).

The courts are committed to an acceptance of the intent of the language employed by the legislature rather than the precise definition of the words themselves. State v. Nance, 77 N.M. 39, 419 P.2d 242 (1966), cert. denied, 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605 (1967).

Entire provision read to give effect to all parts. - Statutes are to be given effect as written, and where free from ambiguity, there is no room for construction. Where there is ambiguity, however, and meaning is not clear, resort may be had to construction and interpretation and, even then, intent is to be determined primarily from the language used, and the entire provision is to be read together so that all parts are given effect in arriving at the intent of the drafters and promulgators. Fort v. Neal, 79 N.M. 479, 444 P.2d 990 (1968).

All of statute and those in pari materia read together. - All of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent. Allen v. McClellan, 75 N.M. 400, 405 P.2d 405 (1965).

The purpose of the "pari materia" rule is to ascertain and carry into effect the legislature's intention. State v. Chavez, 77 N.M. 79, 419 P.2d 456 (1966).

Act in violation of statute void, exception. - The general rule of law is that an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer; but this rule is subject to the qualification that when, upon a survey of the statute, its subject matter and the mischief sought to be prevented, it appears that the legislature intended otherwise, effect must be given to that intention. State ex rel. State Tax Comm'n v. Garcia, 77 N.M. 703, 427 P.2d 230 (1967).

Matter may be implied to effect intent. - The spirit, as well as the letter of the statute, must be respected; and where the whole context of a law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent. 1961-62 Op. Att'y Gen. No. 61-75.

Statutes are to be interpreted with reference to their manifest object, and "if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction." Martinez v. Research Park, Inc., 75 N.M. 672, 410 P.2d 200 (1965).

Evils to be corrected and purpose considered in construction. - The evils which the legislature intended to correct and the purpose of the legislation must be considered in construing a statute. It cannot be assumed that the legislature would do a futile thing. Hayes v. Hagemeier, 75 N.M. 70, 400 P.2d 945 (1963).

Ordinary rules and intent are guides to construe penal statutes. - Penal statutes are not to be subjected to any strained or unnatural construction in order to work exemptions from their penalties, and such statutes must be interpreted by the aid of the ordinary rules for the construction of statutes, and with the cardinal object of ascertaining the intention of the legislature. State v. Ortiz, 78 N.M. 507, 433 P.2d 92 (Ct. App. 1967).

When statutes void. - A statute may be void for vagueness where no ascertainable legislative intent is revealed. It may be equally void where there is more than one

reasonable construction possible but there is no means of determining which construction was intended by the legislature. 1961-62 Op. Att'y Gen. No. 61-32.

VI. Construction of Words and Phrases.

A. Ordinary Meaning.

When ordinary meaning given to words. - Ordinary words are given ordinary meaning where there is no evidence of legislative intent to do otherwise. State ex rel. Maloney v. Sierra, 82 N.M. 125, 477 P.2d 301 (1970).

When no intent, otherwise, usual meaning given. - In construing a statute where there is no clearly expressed legislative intent requiring otherwise, the word is to be given its usual, ordinary meaning. Tafoya v. New Mexico State Police Bd., 81 N.M. 710, 472 P.2d 973 (1970).

Statute given effect as written unless different intent. - A statute is to be read and given effect as written and the words used in a statute are to be given their ordinary and usual meaning unless a different intent is clearly indicated. Gonzales v. Oil, Chem. & Atomic Workers Int'l Union, 77 N.M. 61, 419 P.2d 257 (1966).

Unless different intent indicated words given ordinary meaning. - Words used in a statute are to be given their ordinary and usual meaning unless a different intent is clearly indicated. State ex rel. State Hwy. Comm'n v. Marquez, 67 N.M. 353, 355 P.2d 287 (1960).

Presumption words are used in ordinary sense. - Statutory words are presumed to be used in their ordinary and usual sense. Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967 (1971).

A statute means what it says. Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n, 82 N.M. 405, 482 P.2d 913 (1971).

When statute makes sense no language read into it. - An appellate court may not read into a statute language which is not there, particularly if it makes sense as written. State ex rel. Barela v. New Mexico State Bd. of Educ., 80 N.M. 220, 453 P.2d 583 (1969).

When meaning plain, no construction. - When the meaning of the statute is plain, there is no room for construction. State v. Clark, 80 N.M. 91, 451 P.2d 995 (Ct. App.), reversed on other grounds, 80 N.M. 340, 455 P.2d 844 (1969).

Presumption in favor of validity and regularity of statutes. - Every presumption is to be indulged in favor of the validity and regularity of legislative enactments. City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967).

B. Ambiguity.

When words free from ambiguity and doubt, no interpretation. - In interpreting a statute the intent is to be first sought in the meaning of the words used, and when they are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the legislature, no other means of interpretation should be resorted to. City of Roswell v. New Mexico Water Quality Control Comm'n, 84 N.M. 561, 505 P.2d 1237 (Ct. App. 1972), cert. denied, 84 N.M. 560, 505 P.2d 1236 (1973).

When terms plain and unambiguous no room for construction. - The meaning of a statute is to be ascertained primarily from its terms, and where they are plain and unambiguous, there is no room for construction. Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n, 82 N.M. 405, 482 P.2d 913 (1971).

If language unambiguous legislative intent understood as it is written. - Legislative intent must be ascertained primarily from the language of the statute and if the language used is plain and unambiguous, the legislature must be understood as meaning what is expressly declared. 1959-60 Op. Att'y Gen. No. 59-63.

No room exists for construction when language of act is clear and unambiguous. Giomi v. Chase, 47 N.M. 22, 132 P.2d 715 (1942).

Statute free of ambiguity given literal meaning. - Where the statute is free of ambiguity it must be given its literal meaning. Sunset Package Store, Inc. v. City of Carlsbad, 79 N.M. 260, 442 P.2d 572 (1968).

No construction when words plain and unambiguous. - If words in the statute being considered are plain and unambiguous, there is no room for construction. State v. McHorse, 85 N.M. 753, 517 P.2d 75 (Ct. App. 1973).

Where a statute is plain, meaningful and unambiguous, there is no room for construction. State ex rel. Barela v. New Mexico State Bd. of Educ., 80 N.M. 220, 453 P.2d 583 (1969).

C. Absurd or Unreasonable.

When statute's application absurd construe according to obvious spirit. - If the language of a statute renders its application absurd or unreasonable, it will be construed according to its obvious spirit or reason. But where the meaning of the language is plain, it must be given effect, and there is no room for construction. State v. Garcia, 83 N.M. 490, 493 P.2d 975 (Ct. App. 1971), cert. denied, 83 N.M. 473, 493 P.2d 958 (1972).

If the language of a statute renders its application absurd or unreasonable, it will be construed according to its obvious spirit or reason. But, as quoted from Ex parte De Vore, 18 N.M. 246, 136 P. 47 (1913) where the meaning of the language is plain, it must be given effect, and there is no room for construction. State v. Ortiz, 78 N.M. 507, 433 P.2d 92 (Ct. App. 1967).

Unless ambiguity, no construction. - Rule of statutory construction that unless there is ambiguity in a statute, construction is uncalled for. 1959-60 Op. Att'y Gen. No. 59-63.

Statutes construed to prevent absurdity, and to favor public convenience. - Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience, and to oppose all prejudice to public interests. 1955-56 Op. Att'y Gen. No. 6479.

An appellate court will not construe statutes to achieve an absurd result or to defeat the intended object of the legislature. State v. Herrera, 86 N.M. 224, 522 P.2d 76 (1974).

Statutes construed in a manner so as to prevent absurdity. 1959-60 Op. Att'y Gen. No. 60-61.

Statutes construed so that application is not absurd. - It is fundamental that statutes will be construed so that their application will be neither absurd nor unreasonable. Midwest Video v. Campbell, 80 N.M. 116, 452 P.2d 185 (1969).

Intention to authorize a deduction must be clear. - The rule is that legislative intention to authorize a deduction must be clearly and unambiguously expressed in the statute. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

D. Surplusage.

The legislature is presumed to have used no surplus words and each word should have attributed to it some meaning not within the plain signification of other language found in the act. Cromer v. J.W. Jones Constr. Co., 79 N.M. 179, 441 P.2d 219 (Ct. App. 1968).

No part of statute rendered superfluous. - It is fundamental that a statute should be so construed that no word, clause, sentence provision or part thereof shall be rendered surplusage or superfluous. Cromer v. J.W. Jones Constr. Co., 79 N.M. 179, 441 P.2d 219 (Ct. App. 1968).

VII. All of Statute Given Effect.

All parts of act construed together. - In statutory construction all parts of an act relating to the same subject matter are to be construed together. Kendrick v. Gackle Drilling Co., 71 N.M. 113, 376 P.2d 176 (1962).

All of statute given effect. - In construing statute, effect is to be given to every clause and section of it, if possible. Butts v. Woods, 4 N.M. (Gild.) 343, 16 P. 617 (1888).

Each word construed with other words to accomplish legislative purpose. - The rules of construction require each word or phrase used in a statute to be construed in connection with every other word, phrase or portion, so as to accomplish the legislative purpose. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

One provision not to destroy another. - The established rule of construction of a statute is that, if possible, it will be construed to give effect to all of its provisions so that one part will not destroy another. State ex rel. Maloney v. Neal, 80 N.M. 460, 457 P.2d 708 (1969).

A statute should be construed, if possible, to give effect to all of its provisions and so that one part will not destroy another. Martinez v. Research Park, Inc., 75 N.M. 672, 410 P.2d 200 (1965).

Meaning and effect given to every part of statute. - An appellate court construes statutes so that meaning and effect will be given to every part thereof. State v. Herrera, 86 N.M. 224, 522 P.2d 76 (1974).

All parts of act generally considered. - Generally all parts of an act of a legislature should be considered so as to give effect to the whole statute. 1955-56 Op. Att'y Gen. No. 6247.

Each part construed to produce harmonious whole. - Particular words, phrases and provisions must be construed with reference to the leading idea or purpose derived from the whole statute. Thus, each part should be construed in connection with every other part so as to produce a harmonious whole. State ex rel. Maloney v. Neal, 80 N.M. 460, 457 P.2d 708 (1969).

VIII. Effect of Prior Constructions.

Presumption when one state adopts statute of another state. - Where one state adopts a statute of another state there is a presumption that it likewise adopts the construction of the statute by the courts of the state from which it was adopted. Gray v. Armijo, 70 N.M. 245, 372 P.2d 821 (1962).

State court's construction of own statutes binds federal agencies and courts. - A state court has the function of declaring and construing its own statutes. Such determination

is binding not only upon federal administrative agencies but upon federal courts as well. Pan Am. Petroleum Corp. v. El Paso Natural Gas Co., 77 N.M. 481, 424 P.2d 397 (1966).

Effect of construction prior to amendment. - When a statute has been construed and the legislature in amending the same substantially sets forth the section in language identical with that which has theretofore been construed, the legislature may be regarded as adopting the construction theretofore made. 1961-62 Op. Att'y Gen. No. 61-41.

Long-standing interpretations by agencies not lightly overturned. - Long-standing interpretations of a doubtful or uncertain statute by the administrative agency charged with administering the statute are persuasive and will not be lightly overturned by the courts. Martinez v. Research Park, Inc., 75 N.M. 672, 410 P.2d 200 (1965).

When factual issues similar administrative construction is highly persuasive. - A long administrative construction of a statute in granting a tax exemption is highly persuasive authority, however, such a rule is predicated upon the premise that the factual issues are similar. BPOE, Lodge No. 461 v. New Mexico Property Appraisal Dep't, 83 N.M. 505, 494 P.2d 167 (Ct. App. 1971), aff'd, 83 N.M. 445, 493 P.2d 411 (1972).

Legislative acquiescence is used only when direct interpretative methods fail. - Use of legislative acquiescence in exercise of power by an agency as evidence of legislative interpretation of a statute is to be resorted to only where meaning is doubtful, and when direct methods of interpretation have failed. State ex rel. Lee v. Hartman, 69 N.M. 419, 367 P.2d 918 (1961).

Failure to disapprove of agency's interpretation is persuasive. - Where the legislature has met since the particular department placed its interpretation on a given statute, its failure to indicate that the administrative construction is not actually in accord with legislative intent is a persuasive argument that the legislative body approves of the administrative agency's construction. 1961-62 Op. Att'y Gen. No. 61-75.

Custom does not relieve party of clear-cut obligations of ordinance. Sanchez v. J. Barron Rice, Inc., 77 N.M. 717, 427 P.2d 240 (1967).

IX. Prospective or Retroactive Application.

Presumption in favor of prospective operation unless clear intent otherwise. - It is presumed that statutes will operate prospectively only, unless an intention on the part of the legislature is clearly apparent to give them retrospective effect. State v. Padilla, 78 N.M. 702, 437 P.2d 163 (Ct. App. 1968).

Retroactive operation not mandated by existence of facts prior to enactment. - A statute does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to the enactment. State v. Mears, 79 N.M. 715, 449 P.2d 85 (Ct. App. 1968).

As a general rule retrospective legislation is not favored. - As a general rule, retrospective or retroactive legislation is not looked upon with favor. For this reason, it is a well established and fundamental rule of statutory construction that all statutes are to be construed as having only a prospective operation. 1959-60 Op. Att'y Gen. No. 60-203.

Therefore all statutes operate prospectively and not retrospectively. - All statutes are to be construed as having only a prospective operation and not as operating retrospectively. 1957-58 Op. Att'y Gen. No. 57-261.

Unless the clear intent is for retrospective effect. - Statutes are presumed to have only prospective effect unless there is strong and clear language of an intent for them to have a retrospective effect. 1959-60 Op. Att'y Gen. No. 60-192.

Intent controls retroactively but an emergency clause implies prospective effect. - Generally, statutes will not be given a retroactive interpretation, especially where the enactment is in derogation of a common-law right or where such interpretation would interfere with an existing contract or create a new liability in connection with a past transaction, invalidate a previously valid defense, or where such an interpretation would render a statute unconstitutional. However, if the intention that a law be retroactive is manifest, such intention will control even though not expressly stated. On the other hand, an emergency clause in the enactment is some indication that the law was not intended to have retroactive effect. 1957-58 Op. Att'y Gen. No. 57-127.

Statutes of limitation ordinarily will not be given retroactive effect unless it clearly appears that the legislature so intended. 1959-60 Op. Att'y Gen. No. 60-203.

New matter in amended statute has no retrospective effect. - A statute amending a prior one by declaring that it shall be amended so as to read in a given manner has no retrospective effect. The portion of the amended statute, which is merely copied without change, is not to be considered as repealed and again enacted, but to have been the law; and the new parts are not to be taken as to have been the law prior to the passage of the amended statute. 1957-58 Op. Att'y Gen. No. 57-20.

X. Repeal by Implication.

A. In General.

Without repealing clause prior statute not abrogated unless inconsistency exists. - In absence of repealing clause expressly designating the prior enactment intended to be abrogated, no new statute will be allowed to sweep away existing legislation unless its terms are such that the new and the old cannot stand together consistently. Wilburn v. Territory, 10 N.M. 402, 62 P. 968 (1900).

General words of repeal add nothing to effect of repealing clause. - Use, in repealing clause, of words "all acts and parts of acts in conflict herewith" adds nothing to the repealing effect of later legislation and repeals nothing which would not be repealed by implication without those words. Territory ex rel. City of Albuquerque v. Matson, 16 N.M. 135, 113 P. 816 (1911).

Repeals by implication are not favored, and will not be held to exist where any other reasonable construction can be placed upon two statutes. State v. Davisson, 28 N.M. 653, 217 P. 240 (1923), error dismissed, 267 U.S. 574, 45 S. Ct. 229, 69 L. Ed. 795 (1925).

Repeals by implication are not to be favored; statutes should be construed together where the objects to be obtained by each can be preserved. Territory ex rel. White v. Riggle, 16 N.M. 713, 120 P. 318 (1911).

Even in absence of repealing clause prior repugnant statute impliedly repealed. - Where later of two statutes having same object and relating to same subject is repugnant to earlier statute, earlier statute is impliedly repealed to extent of repugnancy, even in absence of a repealing clause. Baca v. Board of County Comm'rs, 10 N.M. 438, 62 P. 979 (1900).

When wholly irreconcilable prior statute repealed by later. - A statute may be repealed without being referred to by a subsequent statute on the same subject, when the last statute is wholly irreconcilable with the former and both cannot stand together. Nye v. Board of Comm'rs, 36 N.M. 169, 9 P.2d 1023 (1932); Sandoval v. Board of County Comm'rs, 13 N.M. 537, 86 P. 427 (1906); Geck v. Shepherd, 1 N.M. 346 (1859).

Statute repealed by implication when such intent is manifest. - A statute is repealed by implication, though such repeal is not favored, where the legislative intent that later statute supersede former is manifest; such intent is manifest where the legislature enacts a new and comprehensive body of law which is so inconsistent with and repugnant to the former law on the same subject as to be irreconcilable with it; especially does this result follow where later act expressly notices the former in such a way as to indicate an intention to abrogate. Ellis v. New Mexico Constr. Co., 27 N.M. 312, 201 P. 487 (1921).

When later statute is broad and comprehensive implied repeal results. - Though repeals by implication are not favored, yet courts declare them in cases where the last statute is so broad in its terms and so clear and explicit in its words as to show it was intended to cover the whole subject, and, therefore, to displace the prior statute. Atchison, T. & S.F.

Ry. v. Town of Silver City, 40 N.M. 305, 59 P.2d 351 (1936); State ex rel. County Comm'rs v. Romero, 19 N.M. 1, 140 P. 1069 (1914).

If possible, unless conflict irreconcilable, court will keep both laws operative. - Repeal of statute by implication will not be indulged unless the later act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable, and a court will if possible adopt that conclusion which under the particular circumstances will permit both laws to be operative. 1959-60 Op. Att'y Gen. No. 59-192.

Well settled proposition that two statutes be construed together. - Repeals by implication are not favored, and wherever possible, two statutes will be construed together so that the objects to be attained by each will be preserved, if no contradiction, repugnancy, absurdity or unreasonableness will result. This proposition is well settled in New Mexico. 1957-58 Op. Att'y Gen. No. 58-241.

However, if repugnant, former repealed to extent of repugnancy. - Although repeals by implication are not favored where two statutes have the same object and relate to the same subject, if the later is repugnant to the former, the former is repealed by implication to the extent of the repugnancy in the absence of a repealing clause in the later act. 1961-62 Op. Att'y Gen. No. 61-16.

Amendment or repeal by implication not unconstitutional. - Fact that act may amend or repeal certain provisions of other statutes by implication does not offend against N.M. Const., art. IV, § 18, referring to amendments. State ex rel. Taylor v. Mirabal, 33 N.M. 553, 273 P. 928 (1928).

Strong showing of intent required to create exception to general rule. - In the face of two important canons of statutory construction (presumption against repeal by implication and rule that special act controls over general act to extent of any conflict), it takes a strong showing of legislative intention to create an exception to the general rule. 1961-62 Op. Att'y Gen. No. 62-13.

B. Statutes Harmonized.

Two statutes covering same subject matter should be harmonized. - When two statutes are enacted by the legislature covering the same subject matter, one of them in general terms and the other in a more detailed way, the two should be harmonized, if possible, and construed together. State v. Rue, 72 N.M. 212, 382 P.2d 697 (1963).

Presumption that all laws consistent. - It is a maxim of statutory construction that an interpretation of a statute which creates an inconsistency should be avoided, and since all laws are presumed to be consistent with each other, every effort should be made to harmonize and reconcile them. 1953-54 Op. Att'y Gen. No. 5635.

If two statutes not absolutely irreconcilable both given effect. - Repeals of statutes by implication are not favored, and when two statutes cover in whole or in part the whole matter and are not absolutely irreconcilable, effect should be given if possible to both of them. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938); White v. Board of Educ., 42 N.M. 94, 75 P.2d 712 (1938); State v. Moore, 40 N.M. 344, 59 P.2d 902 (1936); Atchison, T. & S.F. Ry. v. Town of Silver City, 40 N.M. 305, 59 P.2d 351 (1936); State v. Fidelity & Deposit Co., 36 N.M. 166, 9 P.2d 700 (1932); James v. Board of Comm'rs, 24 N.M. 509, 174 P. 1001 (1918); Hagerman v. Meeks, 13 N.M. 565, 86 P. 801 (1906).

Where apparent conflict, without repeal statute will be reconciled. - Where there is an apparent conflict between two acts, without any repeal, the two will be reconciled. State v. Moore, 40 N.M. 344, 59 P.2d 902 (1936).

Interpretation reconciling seemingly contradictory provisions is favored. - If two constitutional or statutory provisions are in seeming contradiction, if some interpretation can be drawn as will leave both provisions operative, such interpretation will be favored. 1957-58 Op. Att'y Gen. No. 57-204.

If two statutes appear in contradictory position, such interpretation as will reconcile the seeming contradiction will be favored. 1957-58 Op. Att'y Gen. No. 57-298.

If statutes are cumulative or reconcilable all are given effect. - One or two affirmative statutes on the same subject matter does not repeal the other if both can stand, as where they are cumulative. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated. 1957-58 Op. Att'y Gen. No. 57-95.

Presumption that legislature knew existing law and did not intend inconsistency. - In interpreting a statute this court may presume that the legislature was informed as to existing law, and that the legislature did not intend to enact a law inconsistent with any existing law or not in accord with common sense or sound reasoning. City Comm'n v. State ex rel. Nichols, 75 N.M. 438, 405 P.2d 924 (1965).

No implied repeal unless new act is clearly repugnant or comprehensive. - If there is no express reference to existing statute or apparent intention to repeal the same, it is to be concluded that the legislature did not intend to abrogate the former law relating to the same matter, unless the later act is clearly repugnant to the prior one, or completely covers and embraces the subject-matter thereof, or unless the reason for the prior act is removed. Smith v. City of Raton, 18 N.M. 613, 140 P. 109 (1914).

But not construed together if repugnancy or unreasonableness would result. - Statutes relating to same subject should be construed together if possible, but this effect should not be accorded to statutes when it leads to contradiction or repugnancy, absurdity or unreasonableness. In re Martinez' Will, 47 N.M. 6, 132 P.2d 422 (1942).

C. Last in Effect.

Earlier law repealed by implication when irreconcilable with later law. - Repeal by implication is not favored, but an earlier law is necessarily repealed by implication when it is absolutely irreconcilable with a later law. Territory v. Digneo, 15 N.M. 157, 103 P. 975 (1909).

But only to extent statutes are incompatible. - Later statute repeals earlier statute by implication only to extent that statutes are incompatible. State v. Fidelity & Deposit Co., 36 N.M. 166, 9 P.2d 700 (1932).

Former repugnant act repealed even in absence of repealing clause. - The doctrine that repeals by implication is not favored is firmly imbedded in law, but we are equally committed to the rule that where two statutes have the same object and relate to the same subject, if the later act is repugnant to the former, the former is repealed by implication to the extent of the repugnancy, even in the absence of the repealing clause in the later act. 1957-58 Op. Att'y Gen. No. 58-116.

Insofar as conflict is concerned last enacted repeals first. - Wherever there is an irreconcilable conflict in two enactments of the legislature, the last in point of time will be deemed to have repealed the first enactment insofar as the conflict is concerned. 1955-56 Op. Att'y Gen. No. 6359.

Where two statutes cannot be construed together last enacted survives. - Where two statutes cannot be construed so as to give effect to each without contradiction or repugnancy or absurdity or unreasonableness, the last enacted will survive. 1959-60 Op. Att'y Gen. No. 59-192.

When two statutes passed at same session are irreconcilable, later prevails. - The principle that repeals by implication are not favored needs no citation of authority. This principle is specially applicable as between two statutes passed at the same session of the legislature. However, if the enactments are irreconcilable, the one which is the later expression of the legislative intent ordinarily prevails over and impliedly repeals the other enactment. 1957-58 Op. Att'y Gen. No. 57-184.

Where two statutes are inconsistent and are passed by the same session of the legislature and both become effective at the same time, the supreme court has held that the law being last in place, position or sequence will govern and repeal by implication the earlier statute. 1955-56 Op. Att'y Gen. No. 6076.

Statute which is last in order of time or local position prevails over that which is first. 1957-58 Op. Att'y Gen. No. 57-184.

If two sections from same act conflict, last placed controls. - The sentence concerning requirement that directors be stockholders, contained in 51-2-14 (since repealed), is in § 5 and the one found in 51-6-1 (since repealed) is in § 8 of the 1927 amendment. If two provisions of the same statute are irreconcilable, the provision last placed will be deemed to repeal the other. The sentence quoted from 51-6-1 was the provision last placed and was controlling. Great W. Constr. Co. v. N.C. Ribble Co., 77 N.M. 725, 427 P.2d 246 (1967).

Penalty provisions of pari materia statutes are irreconcilable, later controlling. - Two statutes where they condemn the same act are in pari materia. The penalty provisions being different, they are irreconcilable, impliedly intending that the last expression of the legislature should control. State v. Chavez, 77 N.M. 79, 419 P.2d 456 (1966).

D. General and Specific.

Conflicts between general and specific statutes are resolved by giving effect to specific statute. Lopez v. Barreras, 77 N.M. 52, 419 P.2d 251 (1966).

To extent of irreconcilability special or specific provision controls general. - As a general rule general or broad statutory provisions do not control, modify, limit, affect or interfere with special or specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special or specific provision modifies, qualifies, limits, restricts, excludes, supersedes, controls and prevails over the general or broad provisions. 1961-62 Op. Att'y Gen. No. 62-13.

General statute not regarded as repealing particular or limited statute. - A general statute will not be regarded as repealing by implication a statute dealing with a particular matter and of limited scope. Waltom v. City of Portales, 42 N.M. 433, 81 P.2d 58 (1938).

Unless repeal is necessary to give later general statute effect. - A subsequent statute treating a subject in general terms will not be held to repeal by implication an earlier statute treating the same subject specifically, unless such construction is absolutely necessary in order to give the subsequent statute effect. State ex rel. Armijo v. Romero, 32 N.M. 178, 253 P. 20 (1927).

Or unless subsequent general statute positively repugnant to specific. - General statute will not impliedly repeal prior local law or special statute or charter unless there is such a positive repugnance between the two that both cannot stand together or be consistently reconciled. Atchison, T. & S.F. Ry. v. Town of Silver City, 40 N.M. 305, 59 P.2d 351 (1936).

However, specific statutes control general regardless of priority of enactment. - The rule that a statute relating to a specific subject controls a general statute which includes the specific subject in the generality of its terms is not dependent upon the time of the

enactment of such statutes. It prevails without regard to priority of enactment. 1961-62 Op. Att'y Gen. No. 62-13.

But general and special statutes should be harmonized where possible. - Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, unless it appears that the legislature intended to make the general act controlling; and this is true a fortiori when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage. It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute. State v. Chavez, 77 N.M. 79, 419 P.2d 456 (1966) (dissent).

Specific statute superseding general statute considered exception to general statute. - A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter supersedes a general statute which does not refer to that subject although broad enough to cover it as the specific statute is considered an exception to or qualification of the general statute. Lopez v. Barreras, 77 N.M. 52, 419 P.2d 251 (1966).

Even though general provision relates to same subject specific controls. - It is well settled that a general provision is controlled by one that is special, the later being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject as against a general provision although the later standing alone would be broad enough to include the subject to which the more particular provision relates. Cromer v. J.W. Jones Constr. Co., 79 N.M. 179, 441 P.2d 219 (Ct. App. 1968).

Specific enactment governs general when enacted at same legislature. - In the event of a conflict between two or more enactments of the same legislature, the special and not the general enactment will govern. 1957-58 Op. Att'y Gen. No. 57-184.

Rule also applies when construing parts of same act. - In construing several parts of the same act together, it is the generally accepted rule that a specific power or provision governs where a general power or provision in the same act can be construed to cover the same area. 1955-56 Op. Att'y Gen. No. 6326.

However, rule does not apply where legislature intended otherwise. - Where general provisions, terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, the particular provisions must govern or control as a clearer and more definite expression of the legislative will, unless the statute as a whole clearly shows a legislative intention to the contrary, or some other

canon of statutory construction compels a contrary conclusion. 1955-56 Op. Att'y Gen. No. 6259.

XI. Effect of Amendments.

Adoption of amendment evidences intent to change original law. - It is a familiar rule of statutory construction that the adoption of an amendment is evidence of an intention by the legislature to change the provision of the original law. Cancienne, Inc. v. Southwest Community Inns, Inc., 80 N.M. 512, 458 P.2d 587 (1969); Martinez v. Research Park, Inc., 75 N.M. 672, 410 P.2d 200 (1965).

Amended act must be accepted as law upon subject embraced therein; the repealed act can be looked to only to interpret anything in which there is substantial doubt as to meaning of the language used. Cortesy v. Territory, 7 N.M. 89, 32 P. 504 (1893).

Portion of amended section not reenacted, repealed. - A statute amending a section "so as to read as follows," repeals all that is not reenacted. Sandoval v. Board of County Comm'rs, 13 N.M. 537, 86 P. 427 (1906).

Saving clause used to retain old statute for specific purposes. - In repealing or amending a statute the legislature may save the old statute for specified purposes by an appropriate saving clause in the repealing or amending act. Board of Educ. v. Citizens' Nat'l Bank, 23 N.M. 205, 167 P. 715 (1917).

XII. Singular and Plural.

When singular appears it can be construed as plural, and vice versa. New Mexico & S.P.R.R. v. Madden, 7 N.M. 215, 34 P. 50 (1893).

Where intent determined it is appropriate to transpose words. - This section provides that words importing the plural number may be applied to one person or thing, for it is appropriate to transpose words and phrases to carry out the manifest intent where the purpose and intent of a statute has been determined. State ex rel. Dresden v. District Court, 45 N.M. 119, 112 P.2d 506 (1941).

Person includes persons. - While effect of a former statute similar to Subsection B of this section was that use of word "person" in statute included plural "persons," the homestead exemption statute could not be construed so as to permit individual partners an exemption of partnership assets equivalent to their homestead. In re Spitz Bros., 8 N.M. 622, 45 P. 1122 (1896).

XIII. Joint Authority of Public Officers.

Section does not mitigate rules against conflicts of interest. - The contention, where a board of education consists of five members and pursuant to Subsection C no one member can have exclusive control of matters before the board, that there are always four members to check any improper act of the fifth, and that the law does not presume that the four remaining members will permit or assist the fifth in furthering his own interests to the detriment of the public, without which presumption it cannot be said that it is improper for a member of the board to hold the office of clerk to the board, was rejected by the court, which found the two offices incompatible, in Haymaker v. State ex rel. McCain, 22 N.M. 400, 163 P. 248 (1917).

XIV. Person.

County is body corporate therefore "person". - A county is fairly included as a body politic and corporate, to which the word "person" is extended. Donalson v. County of San Miguel, 1 N.M. 263 (1859).

XV. Computation of Time.

A. In General.

Section controls method of computation irrespective of nature of limitation. - Whether a limitation is considered procedural or substantive, or whether it is a limitation on the right and remedy or on only the remedy, is immaterial so far as the method to be utilized in computing time under this section is concerned. Keilman v. Dar Tile Co., 74 N.M. 305, 393 P.2d 332 (1964).

Also provides only case where Sunday is excluded. - Subsection G changes the common-law rule, and requires the court to include intervening Sundays in computing time. It also provides the only case wherein Sunday is to be excluded. Atchison, T. & S.F. Ry. v. Solorzano, 21 N.M. 503, 156 P. 242 (1916).

Days counted consecutively. - The legislative rule of statutory construction found in Subsection G assumes that in computing periods of time set forth in legislative enactments, it is intended that days be counted consecutively. 1969 Op. Att'y Gen. No. 69-82.

When Sunday last day for payment following Monday acceptable. - When last day for payment of rental under an oil and gas lease falls on Sunday, lessee may pay on following Monday. Durell v. Miles, 53 N.M. 264, 206 P.2d 547 (1949).

Also true for filing application. - Where sixth day after completion of canvass of election returns fell on Sunday, an application for recount filed in the district court the Monday following, and presented to the district judge promptly on his return after an absence of two days, was seasonable. Sandoval v. Madrid, 35 N.M. 252, 294 P. 631 (1930).

And for filing claim. - Filing of claim against estate one year and a day after issuance of letters testamentary was timely where the last day of the year fell on Sunday. O'Brien v. Wilson, 26 N.M. 641, 195 P. 803 (1921).

Service and return at any hour of day. - Service at any hour on November 19th was sufficient for any hour of November 24th as a return day. Pickering v. Justice of Peace, 16 N.M. 37, 113 P. 619 (1911).

Any time during last day sufficient. - A lot sold for taxes at 10 o'clock in the forenoon on January 30, 1912, could be redeemed by the original owner, or by a person purchasing from the original owner, at any time before the close of January 30, 1915. 1915-16 Op. Att'y Gen. No. 22.

Statute becomes effective at first moment of applicable day. - In calculating effective date of a new act, day of the event is to be excluded and last day of interim period is included, so that statute becomes effective at first moment of applicable day after the event, such as first moment of 90th day after adjournment of legislature. Garcia v. J.C. Penney Co., 52 N.M. 410, 200 P.2d 372 (1948).

B. Legislative Sessions.

Subsection H does not apply to constitutional conventions. - The rule expressed in Subsection H of 12-2-2 is limited to the computation of time for legislative sessions and does not apply when construing Laws 1969, ch. 134, § 15 (purporting to set a time limit on the constitutional convention). 1969 Op. Att'y Gen. No. 69-82.

Subsection G of this section is proper guideline for constitutional convention. 1969 Op. Att'y Gen. No. 69-82.

XVI. Mandatory or Permissive.

"Shall" and "may" not interchangeable, legislative intent determines use. - Whether words of statutes are mandatory or discretionary is a matter of legislative intent to be determined by consideration of the purpose sought to be accomplished and the general rule is that the words "shall" and "may" shall not be used interchangeably. State ex rel. Robinson v. King, 86 N.M. 231, 522 P.2d 83 (1974).

Directions not essence of duties not mandatory. - Directions in a statute which are not the essence of things to be done are not commonly considered mandatory, particularly where failure to comply does not result in prejudice. State v. Lindwood, 79 N.M. 439, 444 P.2d 766 (Ct. App. 1968).

If public interest involved, public officer's power is mandatory. - Where a public officer is clothed with power in permissive form to perform an act in which the interests of the public are concerned, the permissive language of a statute will be construed as mandatory. State ex rel. Robinson v. King, 86 N.M. 231, 522 P.2d 83 (1974).

When permissive language mandatory. - Permissive language may be construed as mandatory when it plainly appears that the legislature intended to impose a ministerial duty upon a public official or agency rather than entrust the agency with a judgmental function. A mandatory construction is normally suggested when the public or an individual has a claim de jure which demands that the power conferred upon the administrative agency be exercised for the benefit of that claim. 1971 Op. Att'y Gen. No. 71-104.

When "shall" mandatory. - A claim for relief "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief," and that "each averment of a pleading shall be simple, concise and direct." The word "shall" is mandatory. Mantz v. Follingstad, 84 N.M. 473, 505 P.2d 68 (Ct. App. 1972.).

"Shall" held mandatory. - "Shall" in 31-1-3 NMSA 1978, and in former Rule 40, N.M.R. Crim. P. (now Rule 5-607), is mandatory. State v. Davis, 97 N.M. 745, 643 P.2d 614 (Ct. App. 1982).

XVII. Strict or Liberal Construction.

A. Strict.

Ambiguity in criminal statute construed against the state. - Courts will not add words in the construction of a statute, except where it is necessary to do so to make the statute conform to the obvious intent of the legislature, or to prevent absurdity, and if there be any ambiguity or doubt concerning the meaning of a criminal statute, it will be construed against the state which enacted it and in favor of the accused. State v. Ortiz, 78 N.M. 507, 433 P.2d 92 (Ct. App. 1967).

Court will not change or limit wording in criminal statute in order to construe it against the accused. Penal statutes are strictly construed and should be of sufficient certainty so that a person will know his act is criminal when he does it. State v. Collins, 80 N.M. 499, 458 P.2d 225 (1969).

Criminal statutes fairly and reasonably construed as to both sides. - The cardinal rule in the construction of a statute is to ascertain the intention of the legislature as it is expressed in the words of the statute, and for this purpose the whole act must be considered. The law, it is true, in its tenderness for life and liberty, requires that penal statutes shall be strictly construed, by which is meant that courts will not extend punishment to cases not plainly within the language used. At the same time such statutes are to be fairly and reasonably construed, and the courts will not by a narrow and strained construction exclude from its operation cases plainly within their scope of meaning. State v. Garcia, 83 N.M. 490, 493 P.2d 975 (Ct. App. 1971), cert. denied, 83 N.M. 473, 493 P.2d 958 (1972).

Intendment not to broaden penal statutes. - Penal statutes must be strictly construed, and the definition of crimes therein contained is not to be broadened by intendment. State v. Allen, 77 N.M. 433, 423 P.2d 867 (1967).

Penal statutes must be strictly interpreted with respect to offense. State v. Shop Rite Foods, Inc., 74 N.M. 55, 390 P.2d 437 (1964).

And criminal sentences must be imposed as prescribed by statute. State v. Baros, 78 N.M. 623, 435 P.2d 1005 (1968).

Constructive service of process is in derogation of common law; it is harsh; and a statute authorizing it is to be strictly construed. Kalosha v. Novick, 84 N.M. 502, 505 P.2d 845 (1973).

Tort Claims Act in derogation of common-law rights. - A court must strictly construe the Tort Claims Act, since it is in derogation of one's common-law right to sue for negligence. Wells v. County of Valencia, 98 N.M. 3, 644 P.2d 517 (1982).

When tax statutes strictly construed. - Statutes imposing taxes and providing means for the collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be construed with fairness, if not liberality, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. NBS Corp. v. Valdez, 75 N.M. 379, 405 P.2d 224 (1965).

Where ambiguity exists statute construed against taxing authority. - Where an ambiguity or doubt exists as to the meaning or applicability of a tax statute, it should be construed most strongly against the taxing authority and in favor of those taxed. New Mexico Elec. Serv. Co. v. Jones, 80 N.M. 791, 461 P.2d 924 (Ct. App. 1969).

Statute of exemption from taxation must receive a strict construction, and no claim of exemption should be sustained unless within the express letter or the necessary scope of the exempting clause. Gibbons & Reed Co. v. Bureau of Revenue, 80 N.M. 462, 457 P.2d 710 (1969).

B. Liberal.

Statutes construed as beneficial and favoring public convenience. - It is a well-recognized rule of construction that statutes should be construed in a beneficial way in order to prevent absurdity, hardship, injustice and so as to favor public convenience. 1957-58 Op. Att'y Gen. No. 57-246.

Exemption statutes are liberally construed in favor of debtor. Advance Loan Co. v. Kovach, 79 N.M. 509, 445 P.2d 386 (1968); McFadden v. Murray, 32 N.M. 361, 257 P. 999 (1927).

"Remedial and humanitarian" statute is to be broadly construed, and exceptions thereto, in application, be narrowly construed. 1957-58 Op. Att'y Gen. No. 57-248.

Statutes dealing with public assistance are to be liberally construed to carry out the intent and purpose of the legislation. 1953-54 Op. Att'y Gen. No. 5631.

XVIII. Common-Law Criminal Intent.

Unless legislative intent indicates otherwise, criminal intent will be required. - Except where the legislature clearly indicates a desire to eliminate the requirement of criminal intent, criminal statutes will be construed in the light of the common law and criminal intent will be required, and failure to instruct on this required element will be considered jurisdictional. State v. Fuentes, 85 N.M. 274, 511 P.2d 760 (Ct. App.), cert. denied, 85 N.M. 265, 511 P.2d 751 (1973).

Act prohibited only by statute construed in light of common law. - When an act is prohibited and made punishable by statute only, the statute is to be construed in the light of the common law and the existence of a criminal intent is to be regarded as essential, although the terms of the statute do not require it. State v. Austin, 80 N.M. 748, 461 P.2d 230 (Ct. App. 1969); State v. Jordan, 83 N.M. 571, 494 P.2d 984 (Ct. App. 1972).

Requirement of criminal intent is matter of construction. - Whether a criminal intent is to be regarded as essential is a matter of construction, to be determined from a consideration of the matters prohibited and the language of the statute, in the light of the common-law rule. State v. Jordan, 83 N.M. 571, 494 P.2d 984 (Ct. App. 1972).

Criminal intent is required unless it clearly appears legislature intended otherwise. - The legislature may forbid the doing of an act and make its commission criminal, without regard to the intent with which such act is done; but in such case it must clearly appear from the act, from its language or clear inference, that such was the legislative intent.

State v. Austin, 80 N.M. 748, 461 P.2d 230 (Ct. App. 1969).

Intent is required unless it clearly appears that the legislature meant to eliminate intent as part of the offense. State v. Pedro, 83 N.M. 212, 490 P.2d 470 (Ct. App. 1971).

XIX. Miscellaneous Words and Phrases.

Construction of "electors voting in the whole state". - To construe "electors voting in the whole state" (N.M. Const., art. XIX, § 1) to in effect mean "all electors voting at the election," as distinguished from those voting on the particular amendment, would have the effect of making the "unamendable section" (N.M. Const., art. VII, § 1) even more unamendable than would otherwise be true. To so hold would in effect attribute to the membership of the convention, the congress of the United States and the electorate who ratified the constitution and the amendment to N.M. Const., art. XIX, § 1 the intention of incorporating provisions which ostensibly provide for amendment while in fact making it impossible. State ex rel. Witt v. State Canvassing Bd., 78 N.M. 682, 437 P.2d 143 (1968).

Meaning of "indebtedness". - In using word "indebtedness" in statute creating and organizing new county, legislature intended what that expression meant in common parlance. Board of County Comm'rs v. Board of County Comm'rs, 5 N.M. 190, 21 P. 83 (1889).

Meaning of "removed". - The removal contemplated by the word "removed" as used in N.M. Const., art. XX, § 2, refers to ouster from office of an officer under the provisions of the statute authorizing removal for misconduct. It has no reference to ouster by quo warranto proceedings, which are invoked and exercised only where a person is usurping the functions of an office to which he has no legal title. The provision clearly intended to permit the immediate removal from office of all officers who were found guilty of misconduct sufficient to oust them from office. Haymaker v. State ex rel. McCain, 22 N.M. 400, 163 P. 248 (1917).

Tax and assessment contrasted. - An assessment is unlike a tax in that the proceeds must be expended in an improvement from which a benefit, clearly exceptive and plainly perceived, must enure to the property upon which it is imposed. There is a wide difference in law between a tax and an assessment. In the one case the taxes are assessed against the individual and become a charge upon his property generally. In the other, the assessment, being for benefits accruing to the specific property, becomes a charge only upon and against it, and liability for the charge is confined to the particular property benefited. Leigh v. Hertzmark, 77 N.M. 789, 427 P.2d 668 (1967).

Construction of "the ballot shall contain . . .". - The words "the ballot shall contain the text of the ordinance or resolution . . .." from 3-14-17 NMSA 1978 direct that the ballot

show the complete text of a proposed ordinance. The statute is not ambiguous, therefore construction is not called for. 1970 Op. Att'y Gen. No. 70-40.

Meaning of "vacancy". - The word "vacancy," as applied to an office, has no technical meaning. An office is vacant whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some future event. 1959-60 Op. Att'y Gen. No. 59-1.

Use of "void" and "voidable". - The word "void" is not always used in an absolute or in its literal sense but may be and often is used in the sense of "voidable." Where an enactment has relation only to the benefit of particular persons, "void" will be understood as "voidable" only at the election of the person or persons for whose protection the enactment was made, provided they are capable of protecting themselves. "Absolutely void" is that which the law or nature of things forbids to be enforced at all, and that is "relatively void" which the law condemns as a wrong to individuals and refuses to enforce against them. State ex rel. State Tax Comm'n v. Garcia, 77 N.M. 703, 427 P.2d 230 (1967).

XX. Miscellaneous Rules of Construction.

Application of ejusdem generis. - The rule of statutory construction, ejusdem generis, is that general words in a statute, which follow a designation or enumeration of particular subjects, objects, things or classes of persons, will ordinarily be presumed to be restricted so as to embrace only subjects, objects, things or classes of the same general character, sort or kind, to the exclusion of all others. It arises from the presumption that, having enumerated a list of things or persons, the legislature must have had in mind no other kind. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

Specific words control general words which follow. - Under well-settled rules of statutory construction, when general words are used, following the enumeration of specific classes of things, the general words are to be construed as applicable only to things of the same general nature as those enumerated. 1957-58 Op. Att'y Gen. No. 57-279.

Maxim "expressio unius est exclusio alterius" is only an aid. - The legal maxim "expressio unius est exclusio alterius," while time honored, is only an aid to construction. It is not a rule of law, and in any event is of limited application. 1957-58 Op. Att'y Gen. No. 58-18.

State of law when act passed may aid construction. - In the interpretation of a statute, changes made by the act in the previous state of the law may be given consideration. Indeed, one of the recognized rules of construction of statutes is to look to the state of the law when the statute was enacted in order to see for what is was intended as a substitute. Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967 (1971).

One guide is history and prior condition of law. - One guide in the construction of a statute that is most useful to the courts is the consideration of the history and prior condition of a particular law. Munroe v. Wall, 66 N.M. 15, 340 P.2d 1069 (1959).

Proviso survives invalidity when disjunctive. - While it is the general rule that a proviso modifies or restricts only that part of a statute which immediately precedes it and therefore would fall when that part of the statute falls, there is an exception to this rule to the effect that the mere fact that a sentence begins "provided" does not of necessity make it a proviso and that it may, in fact, be used in the disjunctive and contain new matter rather than an exception to what has gone before. 1959-60 Op. Att'y Gen. No. 59-188.

Severability clause an aid in construction. - The presence or absence of a severability clause merely provides one rule of construction which may be considered and may sometimes aid in determining legislative intent, "but it is an aid merely; not an inexorable command." Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 70 N.M. 226, 372 P.2d 808 (1962).

Title of statute may be referred to for resolving doubts concerning statute's meaning. State ex rel. Sedillo v. Sargent, 24 N.M. 333, 171 P. 790 (1918).

§ 12-2-3. Officer defined for certain statutes.

In all statutes which:

A. use the general term or terms "public officer," "public officials," "officer" or any similar term signifying the same class of persons; and

B. do not specifically define the term to include those excluded by this section; and

C. which limit, prohibit or penalize the ability, privilege or right of persons of that class to deal with the state, or any of its agencies or political subdivision [subdivisions], other than an agency or subdivision under the executive control or supervision of that person or a board or commission of which that person is a member, the term or terms shall be construed to mean a salaried public official who receives an annual, monthly or daily salary, or is compensated for his services in the form of fees. The term or terms shall not be construed to mean officers or officials who receive per diem expense and mileage only.

History: 1953 Comp., § 1-2-2.1, enacted by Laws 1963, ch. 197, § 1.

Effective dates. - Laws 1963, ch. 197, contains no effective date provision, but was enacted at a session which adjourned on March 9, 1963. See N.M. Const., art. IV, § 23.

§ 12-2-4. Death defined.

A. For all medical, legal and statutory purposes, death of a human being occurs when, and "death," "dead body," "dead person" or any other reference to human death means that:

(1) based on ordinary standards of medical practice, there is the absence of spontaneous respiratory and cardiac function and, because of the disease or condition which caused, directly or indirectly, these functions to cease, or because of the passage of time since these functions ceased, there is no reasonable possibility of restoring respiratory or cardiac functions; in this event death occurs at the time respiratory or cardiac functions ceased; or

(2) in the opinion of a physician, based on ordinary standards of medical practice:

(a) because of a known disease or condition there is the absence of spontaneous brain function; and

(b) after reasonable attempts to either maintain or restore spontaneous circulatory or respiratory functions in the absence of spontaneous brain function, it appears that further attempts at resuscitation and supportive maintenance have no reasonable possibility of restoring spontaneous brain function; in this event death will have occurred at the time when the absence of spontaneous brain function first occurred. Death is to be pronounced pursuant to this paragraph before artificial means of supporting respiratory or circulatory functions are terminated and before any vital organ is removed for purposes of transplantation in compliance with the Uniform Anatomical Gift Act [Chapter 24, Article 6 NMSA 1978].

B. The alternative definitions of death in Paragraphs (1) and (2) of Subsection A of this section are to be utilized for all purposes in this state, including but not limited to civil and criminal actions, notwithstanding any other law to the contrary.

History: 1953 Comp., § 1-2-2.2, enacted by Laws 1973, ch. 168, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 40 Am. Jur. 2d Homicide § 1.5.
Homicide: physician's withdrawal of life supports from comatose patient, 47 A.L.R.4th 18.
25 C.J.S. Death § 1.

§ 12-2-5. [Death defined; presumptive decedents.]

Presumptive decedents under Section 31-14-1 NMSA 1953 shall not be affected by this act [12-2-4, 12-2-5 NMSA 1978].

History: 1953 Comp., § 1-2-2.3, enacted by Laws 1973, ch. 168, § 2.

Compiler's notes. - Section 31-14-1, 1953 Comp., referred to in this section, was repealed by Laws 1975, ch. 257, § 9-101. For present comparable provisions, see 45-1-107 B NMSA 1978.

§ 12-2-6. [Repeal of a repealing act.]

That whenever an act is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided.

History: Laws 1912, ch. 21, § 1; Code 1915, § 5426; C.S. 1929, § 139-104; 1941 Comp., § 1-203; 1953 Comp., § 1-2-3.

Rule set forth by this section was not retroactive; previously New Mexico followed the common-law rule. Gallegos v. Atchison, T. & S.F. Ry., 28 N.M. 472, 214 P. 579 (1923).

Section is contrary to common law. - At common law, when an act was repealed which repealed a former act, such former act was thereby revived, and again became effective, without formal words to that effect, but that rule did not apply where new enactment, by which repealing statute was repealed, consisted of a revision or substitute for the original act. In such cases it was manifest that legislature did not intend to revive the original act, but to legislate anew upon the subject. Gallegos v. Atchison, T. & S.F. Ry., 28 N.M. 472, 214 P. 579 (1923).

Common-law rule inapplicable when last repealing section enacts new matter. - Common-law rule did not apply where new enactment, by which repealing statute was repealed, consisted of a revision or substitute for the original act, or where new legislation upon subject of original act was therein adopted. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930); Gallegos v. Atchison, T. & S.F. Ry., 28 N.M. 472, 214 P. 579 (1923).

Under former law nothing prohibited revival. - Prior to the adoption of the constitution, there was nothing in the Organic Act or in the laws of congress relating to the territory prohibiting the repeal of a repealing act and revival of the original law by such repeal. State v. Elder, 19 N.M. 393, 143 P. 482 (1914) (Construing acts passed before the passage of this section.).

Three methods of revival. - There are three methods by which, under the law, a former law can be revived after being, as here, repealed. The first is the common law where the repealing statute is repealed prior to the enactment of this section. The second is by the annulment of a repealing statute under the provisions of the constitution. The third is by repealing the repealing act, and specifically providing for revival of the repealed legislation as provided in this section. 1966 Op. Att'y Gen. No. 66-4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 Am. Jur. 2d Statutes §§ 378 to 399.
Unconstitutionality of later statute as affecting provision purporting specifically to repeal earlier statute, 102 A.L.R. 802.
Retroactive application of repeal of statute which operated as limitation of or exception to a substantive right or action in tort otherwise arising at common law, 120 A.L.R. 943.
Constitutionality and construction of repeal or modification by legislative action of teachers' tenure statute, as regards retrospective operation, 147 A.L.R. 293.
Power and duty of court where legislature repeals statute previously passed making constitutional mandate effectual, 153 A.L.R. 525.
Constitutional requirement that repealing statute refer to statute repealed as applicable to repeal by implication, 5 A.L.R.2d 1270.
82 C.J.S. Statutes § 307.

Article 3

State Seal, Song and Symbols

§ 12-3-1. [State seal; design.]

The coat of arms of the state shall be the Mexican eagle grasping a serpent in its beak, the cactus in its talons, shielded by the American eagle with outspread wings, and grasping arrows in its talons; the date 1912 under the eagles and, on a scroll, the motto: "Crescit Eundo." The great seal of the state shall be a disc bearing the coat of arms and having around the edge the words "Great Seal of the State of New Mexico."

History: Laws 1887, ch. 70, § 1; C.L. 1897, § 3798; Code 1915, § 5422; C.S. 1929, § 135-101; 1941 Comp., § 3-1301; 1953 Comp., § 4-14-1.

Compiler's notes. - The seal as described above was apparently selected by the commission named to provide a state seal according to Joint Resolution No. 11, March 13, 1913 (Laws 1913, p. 172). See also N.M. Const., art. XXII, § 9, providing for continuance of territorial seal until changed.

Use by anyone other than state prohibited. - Use of the great seal of the state by anyone other than by the state of New Mexico, for any purpose, is not permitted. 1951-52 Op. Att'y Gen. No. 5569.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States § 39.

§ 12-3-2. [Adoption of flag for state of New Mexico.]

That a flag be and the same is hereby adopted to be used on all occasions when the state is officially and publicly represented, with the privilege of use by all citizens upon

such occasions as they may deem fitting and appropriate. Said flag shall be the ancient Zia sun symbol of red in the center of a field of yellow. The colors shall be the red and yellow of old Spain. The proportion of the flag shall be a width of two-thirds its length. The sun symbol shall be one-third of the length of the flag. Said symbol shall have four groups of rays set at right angles; each group shall consist of four rays, the two inner rays of the group shall be one-fifth longer than the outer rays of the group. The diameter of the circle in the center of the symbol shall be one-third of the width of the symbol. Said flag shall conform in color and design described herein.

History: Laws 1925, ch. 115, § 1; C.S. 1929, § 128-101; 1941 Comp., § 3-1302; 1953 Comp., § 4-14-2.

§ 12-3-3. Salute to state flag.

The official salute to the state flag is: "I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."

History: 1953 Comp., § 4-14-2.1, enacted by Laws 1963, ch. 120, § 1.

Cross-references. - As to Spanish language salute to state flag, see 12-3-7 NMSA 1978.

§ 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.

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 gramma 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.

History: Laws 1927, ch. 102, § 1; C.S. 1929, § 129-101; 1941 Comp., § 3-1303; Laws 1949, ch. 142, § 1; 1953 Comp., § 4-14-3; Laws 1955, ch. 245, § 1; 1963, ch. 2, § 1; 1965, ch. 20, § 1; 1967, ch. 51, § 1; 1967, ch. 118, § 1; 1973, ch. 95, § 1; 1981, ch. 123, § 1; 1989, ch. 8, § 1; 1989, ch. 154, § 1.

The 1989 amendments. - Laws 1989, ch. 8, § 1, effective June 16, 1989, adding a Subsection J, which read "The bizcochito is adopted as the official cookie of New Mexico" was approved on March 3, 1989. However, Laws 1989, ch. 154, § 1, adding an identical Subsection J and also adding Subsection K, was approved on April 3, 1989. The section is set out as amended by Laws 1989, ch. 154, § 1. See 12-1-8 NMSA 1978.

§ 12-3-5. [State song; adoption.]

That the words and music of the song written by Elizabeth Garrett, entitled, "O, Fair New Mexico," as follows:

Under a sky of azure, where balmy breezes blow;

Kissed by the golden sunshine, is Nuevo Mejico.

Home of the Montezuma, with fiery heart aglow,

State of the deeds historic, is Nuevo Mejico.

Chorus

O, fair New Mexico, we love, we love you so

Our hearts with pride o'erflow, no matter where we go,

O, fair New Mexico, we love, we love you so,

The grandest state to know, New Mexico.

Second Verse

Rugged and high sierras, with deep canyons below;

Dotted with fertile valleys, is Nuevo Mejico.

Fields full of sweet alfalfa, richest perfumes bestow,

State of apple blossoms, is Nuevo Mejico.

Chorus

Third Verse

Days that are full of heart-dreams, nights when the moon hangs low;

Beaming its benediction, o'er Nuevo Mejico.

Land with its bright manana, coming through weal and woe;

State of our esperanza, is Nuevo Mejico.

be and the same are hereby adopted and declared to be the state song for the state of New Mexico.

History: Laws 1917, ch. 108, § 1; C.S. 1929, § 136-101; 1941 Comp., § 3-1304; 1953 Comp., § 4-14-4.

Compiler's notes. - Laws 1937, ch. 67, authorized the governor of the state of New Mexico to purchase the state song, including the copyright thereof, from its author, Elizabeth Garrett, paying the author an annuity of $50.00 per month, during her lifetime, in consideration for said copyright and the royalties accruing thereunder.

§ 12-3-6. Spanish language state song.

The words and music of "Asi Es Nuevo Mejico," written by Amadeo Lucero, are declared to be the Spanish language state song subject to the state of New Mexico acquiring ownership and copyright of this song. The words are:

Un canto que traigo muy dentro del alma

Lo canto a mi estado-mi tierra natal.

De flores dorada mi tierra encantada

De lindas mujeres-que no tiene igual.

(Chorus)

Asi es Nuevo Mejico

Asi es esta tierra del sol

De sierras y valles de tierras frutales

Asi es Nuevo Mejico

Second Verse

El negro, el hispano, el anglo, el indio

Todos son tus hijos, todos por igual.

Tus pueblos y aldeas-mi tierra encantada

De lindas mujeres que no tiene igual.

(Chorus)

Third Verse

El Rio del Norte, que es el Rio Grande,

Sus aguas corrientes fluyen hasta el mar

Y riegan tus campos

Mi tierra encantada de lindas mujeres

Que no tiene igual.

(Chorus)

Fourth Verse

Tus campos se visten de flores de Mayo

De lindos colores

Que Dios les doto

Tus pajaros cantan mi tierra encantada

Sus trinos de amores

Al ser celestial.

(Chorus)

Fifth Verse

Mi tierra encantada de historia banada

Tan linda, tan bella-sin comparacion.

Te rindo homenaje, te rindo carino

Soldado valiente-te rinde su amor.

(Chorus)

History: 1953 Comp., § 4-14-4.1, enacted by Laws 1971, ch. 178, § 1.

§ 12-3-7. Spanish language salute to the state flag.

The official Spanish language salute to the state flag is: Saludo la bandera del estado de Nuevo Mejico, el simbolo zia de amistad perfecta, entre culturas unidas.

History: 1953 Comp., § 4-14-4.2, enacted by Laws 1973, ch. 185, § 1.

Cross-references. - As to English language salute to state flag, see 12-3-3 NMSA 1978.

§ 12-3-8. [State song; filing in office of secretary of state.]

A copy of said [state] song exhibited with this bill shall be filed with the secretary of the state to be by him lodged in the archives of his office.

History: Laws 1917, ch. 108, § 2; C.S. 1929, § 136-102; 1941 Comp., § 3-1305; 1953 Comp., § 4-14-5.

Meaning of "this bill". - This bill refers to Laws 1917, ch. 108, compiled herein as 12-3-5, 12-3-8 NMSA 1978.

§ 12-3-9. State slogan for business, commerce and industry.

The official state slogan for business, commerce and industry in New Mexico is: "Everybody is somebody in New Mexico."

History: 1953 Comp., § 4-14-6, enacted by Laws 1975, ch. 129, § 1.

§ 12-3-10. State ballad.

The words and music of "Land of Enchantment - New Mexico", written by Michael Martin Murphy, Chick Raines and Don Cook, are declared to be the official state ballad. The words of the state ballad are as follows:

I met a lady in my drifting days

I quickly fell under the spell of her loving ways

A rose in the desert I loved her so

In the Land of Enchantment, New Mexico

As we watched the sunset by the Rio Grande

A mission bell rang farewell she took my hand

She said "come back amigo no matter where you go"

To the Land of Enchantment, New Mexico

From her arms I wandered, far across the sea

I often heard her gentle words haunting me

"Come back amigo, I miss you so"

To the Land of Enchantment, New Mexico

So come back amigo no matter where you go

To the Land of Enchantment, New Mexico.

History: Laws 1989, ch. 120, § 1.

Effective dates. - Laws 1989, ch. 120 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

Article 4

Public Policy Regarding Communism

§ 12-4-1. [Policy.]

That it is the public policy of the state of New Mexico that no communist organization, affiliate of the communist party or supporter or advocate of communistic doctrine or any person or organization which believes in, teaches or advocates the overthrow of the government of the United States or of the state of New Mexico by force or by any illegal or unconstitutional method or means, shall remain within the state and be unknown or unrecognized.

History: 1941 Comp., § 3-107, enacted by Laws 1951, ch. 157, § 1; 1953 Comp., § 4-15-1.

Cross-references. - As to employment of persons advocating sabotage, sedition or treason being prohibited, see 10-1-12 NMSA 1978.

Secretary's office is only for registration enforcement for local responsibility. - This article quite obviously contemplates that the secretary of state's office shall be merely the office of registration of such persons and organizations, and the secretary of state has no specific duty to enforce the registration of such persons and organizations. The obligation to require the persons defined in this article to register and to prosecute them for failure so to do would lie with the law enforcement authorities of the various districts in which those persons resided and with all law enforcement officials of this state. 1953-54 Op. Att'y Gen. No. 5925.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 70 Am. Jur. 2d Sedition, Subversive Activities and Treason §§ 101 to 110.
Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group, 19 A.L.R.2d 388.

Libel and slander: imputation of subversive or otherwise objectionable political or social principles, 33 A.L.R.2d 1196.
Libel and slander: public officer's privilege in connection with accusation that another has been guilty of sedition, subversion, espionage, or similar behavior, 33 A.L.R.3d 1330.
46 C.J.S. Insurrection and Sedition § 1.

§ 12-4-2. [Registration.]

That to effectuate the public policy as set out in Section 1 [12-4-1 NMSA 1978] hereinabove every communist organization, affiliate of the communist party or supporter or advocate of communistic doctrine, or any person or organization which believes in, teaches or advocates the overthrow of the government of the United States or of the state of New Mexico by force or by any illegal or unconstitutional methods or means, shall register with the secretary of state of New Mexico. Such registration shall be accomplished in such manner and on such forms as may be prescribed by the secretary of state. All organized groups or associations falling into the category required to register under this act [12-4-1 to 12-4-3 NMSA 1978], shall file a list of all of the members of such organization with the secretary of state, such list to show the names of all members, their addresses and designation of all officials of such organization. All individuals required by this act to register shall file their name [names], address [addresses] and the names of the organizations or associations to which they belong as members.

Registration under this act shall be completed within six calendar months after the passage of this act, and registrants shall reregister annually thereafter, such reregistration period to begin on April 1st and ending on May 1st of each year.

History: 1941 Comp., § 3-108, enacted by Laws 1951, ch. 157, § 2; 1953 Comp., § 4-15-2.

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1951, Chapter 157, which appears as 12-4-1 to 12-4-3 NMSA 1978.

Laws 1951, ch. 157 was approved March 15, 1951.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 C.J.S. Insurrection and Sedition § 2.

§ 12-4-3. [Violations; penalties.]

That the officers of any organization, association, party or group which shall fail to register under the provisions of this act [12-4-1 to 12-4-3 NMSA 1978], or any person who shall knowingly fail to comply with the provisions of this act, shall be guilty of a felony and on conviction thereof shall be punished by a fine of not less than five

hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment for not less than three (3) years or more than ten (10) years, or by both such fine and imprisonment.

History: 1941 Comp., § 3-109, enacted by Laws 1951, ch. 157, § 3; 1953 Comp., § 4-15-3.

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1951, Chapter 157, which appears as 12-4-1 to 12-4-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 46 C.J.S. Insurrection and Sedition § 2.

Article 5

Public Holidays

§ 12-5-1. [Arbor Day; establishment; observance.]

The second Friday in March of each year shall be set apart and known as Arbor Day, to be observed by the people of this state in the planting of forest trees for the benefit and adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the general character of the day so established; provided, that the actual planting of trees may be done on the day designated or at such other most convenient times as may best conform to local climatic conditions, such other time to be designated and due notice thereof given by the several county superintendents of schools for their respective counties.

The day as above designated shall be a holiday in all public schools of the state, and school officers and teachers are required to have the schools, under their respective charge, observe the day by planting of trees or other appropriate exercises.

Annually, at the proper season, the governor shall issue a proclamation, calling the attention of the people to the provisions of this section and recommending and enjoining its due observance. The respective county superintendents of schools shall also promote by all proper means the observance of the day, and the said county superintendents of schools shall make annual reports to the governor of the state of the action taken in this behalf in their respective counties.

History: Laws 1891, ch. 35, §§ 1-3; C.L. 1897, § 1625a; Code 1915, § 2726; C.S. 1929, § 65-101; 1941 Comp., § 59-101; 1953 Comp., § 56-1-1.

Legal holiday not necessarily state employee business holiday. - A statutory designation of legal holidays does not result in that day being a business holiday for state employees. 1961-62 Op. Att'y Gen. No. 61-18.

Unless statute, or governor, so directs. - A legal holiday need not be observed by state offices and agencies unless the language of the statute so directs, or unless the governor designates such day as a holiday for state employees. 1961-62 Op. Att'y Gen. No. 61-18.

§ 12-5-2. Legal holidays; designation.

Legal public holidays in New Mexico are:

A. New Year's day, January 1;

B. Martin Luther King, Jr.'s birthday, third Monday in January;

C. Washington's and Lincoln's birthday, President's day, third Monday in February;

D. Memorial day, last Monday in May;

E. Independence day, July 4;

F. Labor day, first Monday in September;

G. Columbus day, second Monday in October;

H. Armistice day and Veterans' day, November 11;

I. Thanksgiving day, fourth Thursday in November; and

J. Christmas day, December 25.

History: 1953 Comp., § 56-1-2, enacted by Laws 1969, ch. 114, § 1; 1971, ch. 98, § 1; 1975, ch. 13, § 1; 1987, ch. 3, § 1; 1987, ch. 309, § 1.

Repeals and reenactments. - Laws 1969, ch. 114, § 1, repealed a former 56-1-2, 1953 Comp., relating to the designation of November 11, Veterans' Day, as a legal holiday, and enacted a new 56-1-2, 1953 Comp.

The 1987 amendments. - Laws 1987, ch. 3, § 1, substituting "last Monday in May" for "May 30" in Subsection D, was approved February 20, 1987. However, Laws 1987, ch. 309, § 1, adding the subsection designations, adding Subsection B, and in Subsection C, inserting "and Lincoln's" and "President's day", and making the same change in Subsection D as the first 1987 amendment, was approved April 10, 1987. The section is set out as amended by Laws 1987, ch. 309, § 1. See 12-1-8 NMSA 1978.

Good Friday. - Although under this section, Good Friday is not listed as a designated legal holiday, Paragraph A of Rule 12-308, R. App. P., defines "legal holiday" for the

purpose of the rules for appellate civil procedure. Public Serv. Co. v. Catron, 98 N.M. 134, 646 P.2d 561 (1982).

State employees paid for day given as compensatory time. - State employees who were given a holiday by their department head on November 24, 1961, may be paid for this day, since the date constituted compensatory time for an officially declared holiday. 1961-62 Op. Att'y Gen. No. 61-121.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 Am. Jur. 2d Sundays and Holidays §§ 1 to 5.
40 C.J.S. Holidays §§ 1, 2.

§ 12-5-3. Legal holidays; Sundays; effect on commercial paper.

A. Whenever a legal public holiday falls on Sunday, the following Monday is a legal public holiday.

B. Any bill, check or note presentable for acceptance or payment on a legal public holiday or on a Sunday is payable and presentable for acceptance or payment on the next business day after the legal public holiday or Sunday.

History: 1953 Comp., § 56-1-3, enacted by Laws 1969, ch. 114, § 2.

Repeals and reenactments. - Laws 1969, ch. 114, § 2, repeals 56-1-3, 1953 Comp., relating to the designation of October 12, Columbus Day, as a legal holiday, and enacts the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 10 Am. Jur. 2d Banks § 710; 11 Am. Jur. 2d Bills and Notes §§ 49, 732, 736; 73 Am. Jur. 2d Sundays and Holidays § 5.
10 C.J.S. Bills and Notes §§ 173, 352, 353; 40 C.J.S. Holidays § 2.

§ 12-5-4. [August 3rd designated Ernie Pyle Day.]

In appreciation of the splendid work as a writer and war correspondent, and the great credit reflected upon the state of New Mexico by Ernie Pyle, one of her outstanding citizens, his birthday, August 3rd, of each year, is hereby designated as Ernie Pyle Day, upon which appropriate ceremonies shall be held in his honor and in honor of all members of the armed forces of the United States serving so valiantly in the present world war [World War II].

History: 1941 Comp., § 59-107, enacted by Laws 1945, ch. 30, § 1; 1953 Comp., § 56-1-4.

§ 12-5-5. [Onate Day.]

The governor shall designate for the benefit of the state of New Mexico in connection with an annual celebration held in the Espanola valley each year during the month of July, a day during said month to be known as Onate Day.

History: 1941 Comp., § 59-108, enacted by Laws 1949, ch. 85, § 2; 1953 Comp., § 56-1-5.

Compiler's notes. - Laws 1949, ch. 85, § 1, was a preamble which stated that the heritage of the state of New Mexico benefited greatly from the Spanish Conquistadores and that it was proper to honor Juan de Onate, one of the conquistadores.

§ 12-5-6. American History Month.

The month of February is designated "American History Month."

History: 1953 Comp., § 56-1-6, enacted by Laws 1971, ch. 10, § 1.

Repeals and reenactments. - Laws 1969, ch. 114, § 3, repeals old 56-1-6, 1953 Comp., relating to the designation of February 12, Lincoln's birthday, as a legal holiday, and Laws 1971, ch. 10, § 1, enacts the above section.

§ 12-5-7. Bataan Day.

In honor of the brave and patriotic New Mexicans composing the 200th and 515th Coast Artillery Regiments (anti-aircraft) who served in the Philippine Islands during World War Two, fighting insuperable odds and enduring every deprivation, and who, following surrender, entered upon a tragic "death march," the day of April 9 is designated "Bataan Day."

History: 1953 Comp., § 56-1-6.1, enacted by Laws 1971, ch. 63, § 1.

Compiler's notes. - Although this section was enacted as 56-1-6, 1953 Comp., by Laws 1971, ch. 63, § 1, the compiler classified it as 56-1-6.1, 1953 Comp., since Laws 1971, ch. 10, § 1 also enacted a section 56-1-6, 1953 Comp.

§ 12-5-8. Repealed.

Repeals. - Laws 1987, ch. 309, § 2 repeals 12-5-8 NMSA 1978, as enacted by Laws 1983, ch. 235, § 1, relating to Martin Luther King, Jr.'s birthday, effective June 19, 1987. For present comparable provisions, see 12-5-2 NMSA 1978.

§ 12-5-9. American Indian day.

The first Tuesday of February of each year shall be set apart and be known as "American Indian day", in recognition of the many contributions of the American Indians to the economic and cultural heritage of all the citizens of the United States. This day shall be observed by the people of New Mexico in such efforts and undertakings as shall be in harmony with the general character of the day so established.

History: Laws 1987, ch. 24, § 1.

Effective dates. - Laws 1987, ch. 24 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

Article 6

Audit Act

§ 12-6-1. Short title.

Sections 12-6-1 through 12-6-14 NMSA 1978 may be cited as the "Audit Act."

History: 1953 Comp., § 4-31-1, enacted by Laws 1969, ch. 68, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d States § 65.
81A C.J.S. States §§ 134, 229.

§ 12-6-2. Definition.

As used in the Audit Act [12-6-1 to 12-6-14 NMSA 1978], "agency" means any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate courts, district attorneys and charitable institutions for which appropriations are made by the legislature; every political subdivision of the state, created under either general or special act, which receives or expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; school districts; and every office or officer of any of the above.

History: 1953 Comp., § 4-31-2, enacted by Laws 1969, ch. 68, § 2.

New Mexico municipal self-insurers' fund. - The New Mexico municipal self insurers' fund, formed under the provisions of 11-1-3 NMSA 1978, authorizing governing bodies

to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is an "agency," as defined in this section and is, therefore, subject to audit by the state auditor under 12-6-3 NMSA 1978. 1987 Op. Att'y Gen. No. 87-65.

A conservancy district is an agency subject to audit by the State Auditor. 1989 Op. Att'y Gen. No. 89-07.

The New Mexico Military Institute Foundation, Inc., is not an "agency" and, therefore, is not subject to audit by the state auditor. 1988 Op. Att'y Gen. No. 88-79.

§ 12-6-3. Annual and special audits.

A. The financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him. The audits shall be conducted in accordance with generally accepted auditing standards.

B. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

History: 1953 Comp., § 4-31-3, enacted by Laws 1969, ch. 68, § 3.

State auditor may accept federal audit at his option. - The state auditor is fully authorized by Subsection A of this section to accept the annual federal audit of employment security commission (since abolished) funds as an approved independent audit. He is not, however, required to do so and may authorize an audit by personnel designated by him. 1970 Op. Att'y Gen. No. 70-33.

Purely statutory duties of auditor may be transferred. - New Mexico Const., art. V, § 1, in designating the executive offices of state government, among which is the office of state auditor, is silent as to the duties appertaining to the office of state auditor. This being so, the legislature had power to transfer purely statutory duties of the office previously performed by the auditor to another officer of its own choosing. Torres v. Grant, 63 N.M. 106, 314 P.2d 712 (1957).

Section prevails over limitation on divulging information. - The legislature manifests a clear intent in this section that the state auditor have available to him all documents necessary to perform a thorough audit of every governmental entity in accordance with generally accepted auditing standards. The policy is expressed strongly enough so that this section must prevail over 3-38-8 NMSA 1978 (relating to divulging information) (repealed in 1981) to the extent of any repugnancy between the two provisions; therefore the state auditor is authorized to examine tax documents generated pursuant to 3-38-1 to 3-38-12 NMSA 1978 (now 3-38-1 to 3-38-6 NMSA 1978) insofar as such examination is required by generally accepted auditing standards. 1978 Op. Att'y Gen. No. 78-22.

Designation of agency to choose its own auditor. - The decision whether the state auditor's office will perform the audit or whether the agency may contract out rests within the state auditor's discretion. Once he has given his written approval to the agency's contract with an independent auditor and said contract has been enacted, however, he may not thereafter revoke the designation. 1987 Op. Att'y Gen. No. 87-54.

If the state auditor revokes his designation of an agency to choose its own auditor, he may conduct the audit himself, through personnel of his office, or with the assistance of independent auditors under contract with his office. 1987 Op. Att'y Gen. No. 87-54.

The state auditor may refuse to approve the choice of independent auditor by an agency for any of the reasons provided in SA Rule 87-2. He is limited to those reasons, because he has, by adopting that rule, committed himself to comply with it until it is changed; however, he is not required to disclose which reason or reasons formed the basis for his decision. 1987 Op. Att'y Gen. No. 87-54.

New Mexico municipal self-insurers' fund. - The New Mexico municipal self insurers' fund, formed under the provisions of 11-1-3 NMSA 1978, authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is an "agency," as defined in this section and is, therefore, subject to audit by the state auditor under this section. 1987 Op. Att'y Gen. No. 87-65.

The New Mexico Military Institute Foundation, Inc., is not an "agency" and, therefore, is not subject to audit by the state auditor. 1988 Op. Att'y Gen. No. 88-79.

State auditor and conservation district supervisors have statutory duty to audit district. - Both the state auditor and the soil and water conservation district supervisors have an express statutory duty to have district financial affairs audited: the primary responsibility for having the audits performed should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who is responsible for ensuring that every agency's financial records are examined and audited. 1980 Op. Att'y Gen. No. 80-19.

Soil and Water Conservation Act creates exception to annual audit. - The apparent conflict between the annual auditing requirement in the Audit Act and the five-year audit exception in the Soil and Water Conservation District Act is easily resolved by applying the well-settled rule of statutory construction that, where there is no clear intention to the contrary, specific statutes prevail over general statutes, regardless of when enacted; consequently, the auditing requirements of the Soil and Water Conservation District Act, 73-20-41C(2) NMSA 1978, apply since it is the more specific statute. 1980 Op. Att'y Gen. No. 80-19.

§ 12-6-4. Auditing costs.

The reasonable cost of all audits shall be borne by the agency audited, except that the administrative office of the courts shall bear the cost of auditing the magistrate court, and the cost of the annual audit of the state treasury shall be borne by special appropriations to the state board of finance. The district courts of all counties within a judicial district shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid from the appropriation to each judicial district. The court clerk trust account and the state treasurer account of each county's district court shall be included within the scope of the judicial district audit.

History: 1953 Comp., § 4-31-4, enacted by Laws 1969, ch. 68, § 4.

§ 12-6-5. Reports of audits.

A. The state auditor shall cause a complete written report to be made of each annual or special audit and examination made. Each report shall set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination. Each report of a state agency, as defined in Section 6-1-12 NMSA 1978 [repealed], shall include a list of individual deposit accounts and investment accounts held by each state agency audited. A copy of the report shall be sent to the legislative accounting review committee and to the agency audited or examined; ten days later, the report shall become a public record, at which time copies shall be sent to:

(1) the secretary of finance and administration; and

(2) the legislative finance committee.

B. The state auditor shall send a copy of reports of state agencies, as defined in Section 6-1-12 NMSA 1978 [repealed], to the office of the state cash manager.

C. Within thirty days after receipt of the report, the agency audited may notify the state auditor of any errors in the report. If the state auditor is satisfied from data or documents at hand, or by an additional investigation, that the report is erroneous, he shall correct the report and furnish copies of the corrected report to all parties receiving the original report.

History: 1953 Comp., § 4-31-5, enacted by Laws 1969, ch. 68, § 5; 1977, ch. 247, § 33; 1983, ch. 26, § 4.

Compiler's notes. - Section 6-1-12 NMSA 1978, referred to in Subsections A and B, was repealed by Laws 1987, ch. 339, § 1. The definition of "state agency" now appears in Subsection C of § 6-1-13 NMSA 1978.

Laws 1983, ch. 26, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

State cash manager. - The former provisions relating to the state cash manager were repealed by Laws 1987, ch. 339, § 1. For present comparable provisions, see 6-1-1 to 6-1-7, 6-1-13 NMSA 1978.

§ 12-6-6. Criminal violations.

Immediately upon discovery of any violation of a criminal statute in connection with financial affairs, the state auditor shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation. Any independent auditor shall report a violation to the state auditor.

History: 1953 Comp., § 4-31-6, enacted by Laws 1969, ch. 68, § 6.

§ 12-6-7. Shortages in accounts; sureties.

A. The state auditor shall notify the appropriate surety on the official bond whenever an audit discloses a shortage in the accounts of any agency. Failure to notify the surety, however, does not release the surety from any obligation under the bond.

B. Sureties upon official bonds of agencies are not released from liability on official bonds until the state auditor has certified to them that the accounts of the agency have been examined and found to be correct and a clearance of liability is given them.

C. When necessary, the state auditor may institute legal proceedings against sureties upon official bonds of officers and employees. In such proceedings, the officer or employee may set up as a defense that errors have been committed by the state auditor in making charges against him, or that he has been refused proper and legal credit by the state auditor, but the burden of proof is upon the officer or employee to show such facts.

History: 1953 Comp., § 4-31-7, enacted by Laws 1969, ch. 68, § 7.

§ 12-6-8. Repayment of funds.

If restitution has not been made in thirty days from the receipt by an agency of a report of an audit reflecting a shortage of funds for which the agency is accountable under law, suit to enforce repayment or refund to the agency may be brought by the state auditor.

History: 1953 Comp., § 4-31-8, enacted by Laws 1969, ch. 68, § 8.

§ 12-6-9. Public depositories.

The state auditor may:

A. require depositories of public money to furnish reconciliation sheets for the purpose of checking the deposits of public funds;

B. inspect the books and records of any depository concerning public funds; and

C. examine employees of a depository under oath concerning the correctness of the reconciliation or any entry upon the books or records of the depository relating to public funds.

History: 1953 Comp., § 4-31-9, enacted by Laws 1969, ch. 68, § 9.

§ 12-6-10. Annual inventory.

A. The governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment costing more than five hundred dollars ($500) 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 five hundred dollars ($500) 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.

History: 1953 Comp., § 4-31-10, enacted by Laws 1969, ch. 68, § 10; 1979, ch. 195, § 1; 1983, ch. 303, § 1; 1984, ch. 53, § 1; 1985, ch. 115, § 1; 1987, ch. 35, § 1.

The 1987 amendment, effective June 19, 1987, substituted "five hundred dollars" for "two hundred and fifty dollars" in the first and fourth sentences of Subsection A.

§ 12-6-11. Oaths; subpoenas.

A. Oaths may be administered by the state auditor when necessary for an audit or examination.

B. When necessary for an audit or examination, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records. Process under this section shall be served by any sheriff or deputy or by any member of the New Mexico state police without cost. Witnesses not then employed by an agency who are subpoenaed to appear shall receive the same compensation as that provided for witnesses subpoenaed before the district court, paid by the state auditor.

C. Any person subpoenaed under this section who fails to appear, refuses to testify or fails to produce the required books or records is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

History: 1953 Comp., § 4-31-11, enacted by Laws 1969, ch. 68, § 11.

§ 12-6-12. Regulations.

The state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards. The regulations become effective upon filing in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: 1953 Comp., § 4-31-12, enacted by Laws 1969, ch. 68, § 12.

§ 12-6-13. Audit fund; payment for audits; expenses of auditor.

A. There is created in the state treasury the "audit fund" into which the state auditor shall deposit all fees and costs received from agencies audited by him.

B. Payments for salaries and expenses of the state auditor shall be made from the audit fund, and the fund shall not revert at the end of any fiscal year.

History: 1953 Comp., § 4-31-13, enacted by Laws 1969, ch. 68, § 13.

Audit fund was not intended for deposit and appropriation of federal funds. 1980 Op. Att'y Gen. No. 80-40.

Provision of General Appropriations Act of 1980 ineffective in controlling federal funds. - Insofar as the language in the General Appropriations Act of 1980, Laws 1980, ch. 155, attempts to control the expenditure of federal funds received by the state auditor, it can be of no effect. 1980 Op. Att'y Gen. No. 80-40.

§ 12-6-14. Contract audits.

B. The state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by regulations of the state auditor. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. No payment of public funds may be made to an independent auditor unless a contract is entered into and approved as provided in this section.

D. The state auditor or personnel of his office designated by him shall examine all reports of audits of agencies made pursuant to contract. Based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract. Final payment for services rendered by an independent auditor shall not be made until a determination and written finding that the audit has been made in a competent manner in accordance with the provisions of the contract and applicable regulations by the state auditor.

History: 1953 Comp., § 4-31-14, enacted by Laws 1969, ch. 68, § 14.

Article 7

Board of Economic Development

(Repealed by Laws 1983, ch. 297, § 33.)

Sec.
12-7-1 to 12-7-3. Repealed.

§§ 12-7-1 to 12-7-3. Repealed.

Repeals. - Laws 1983, ch. 297, § 33, repeals 12-7-1 to 12-7-3 NMSA 1978, relating to the board of economic development, effective July 1, 1983. For present provisions, see 9-15-1 NMSA 1978 et seq.

Article 8

Administrative Procedures Act

§ 12-8-1. Short title.

This act [12-8-1 to 12-8-25 NMSA 1978] may be cited as the "Administrative Procedures Act."

History: 1953 Comp., § 4-32-1, enacted by Laws 1969, ch. 252, § 1.

Cross-references. - For applicability of act, see 12-8-23 NMSA 1978. As to public meetings of policy-making bodies, see 10-15-1 to 10-15-4 NMSA 1978.

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under 7-1-25 NMSA 1978 of the Tax Administration Act (Chapter 7, Article 1 NMSA 1978). Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

Presence of counsel during employee interviews. - Employees may request that counsel of their choosing be present during interviews by the environmental improvement division and such counsel may be company counsel, unless such counsel obstructs and impedes the division's investigation. Kent Nowlin Constr., Inc. v. Environmental Imp. Div., 99 N.M. 294, 657 P.2d 621 (1982).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For survey, "Administrative Law," see 6 N.M. L. Rev. 401 (1976).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For comment, "Survey of New Mexico Law: Administrative Law," see 15 N.M.L. Rev. 119 (1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 187 to 775.
Appealability under "collateral order" doctrine of order staying or dismissing, or refusing to stay or dismiss, proceedings in United States District Court pending federal or state administrative determination, 40 A.L.R. Fed. 740.
73 C.J.S. Public Administrative Law and Procedure §§ 49 to 114; 73A C.J.S. Public Administrative Law and Procedure §§ 115 to 271.

§ 12-8-2. Definitions.

As used in the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978]:

A. "agency" means any state board, commission, department or officer authorized by law to make rules, conduct adjudicatory proceedings, make determinations, grant licenses, impose sanctions, grant or withhold relief or perform other actions or duties delegated by law, and which is specifically placed by law under the Administrative Procedures Act;

B. "adjudicatory proceeding" means a proceeding before an agency, including but not limited to ratemaking and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a trial-type hearing; but does not include a mere rulemaking proceeding, as provided in Section 3 [12-8-3 NMSA 1978] of the Administrative Procedures Act. It also includes the formation and issuance of any order, the imposition or withholding of any sanction and the granting or withholding of any relief, as well as any of the foregoing types of determinations or actions wherein no procedure or hearing provision has been otherwise provided for or required by law;

C. "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission required by law;

D. "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, limiting, modifying or conditioning of a license;

E. "party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, whether for general or limited purposes;

F. "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

G. "rule" includes the whole or any part of every regulation, standard, statement or other requirement of general or particular application adopted by an agency to implement,

interpret or prescribe law or policy enforced or administered by an agency, if the adoption or issuance of such rules is specifically authorized by the law giving the agency jurisdiction over such matters. It also includes any statement of procedure or practice requirements specifically authorized by the Administrative Procedures Act or other law, but it does not include:

(1) advisory rulings issued under Section 9 [12-8-9 NMSA 1978] of the Administrative Procedures Act;

(2) regulations concerning only the internal management or discipline of the adopting agency or any other agency and not affecting the rights of, or the procedures available to, the public or any person except an agency's members, officers or employees in their capacity as such member, officer or employee;

(3) regulations concerning only the management, confinement, discipline or release of inmates of state penal, correctional, public health or mental institutions;

(4) regulations relating to the use of highways or streets when the substance of the regulations is indicated to the public by means of signs or signals; or

(5) decisions issued or actions taken or denied in adjudicatory proceedings;

H. "rulemaking" means any agency process for the formation, amendment or repeal of a rule;

I. "order" means the whole or any part of the final or interim disposition, whether affirmative, negative, injunctive or declaratory in form, by an agency in any matter other than rulemaking but including licensing;

J. "sanction" includes the whole or part of any agency:

(1) prohibition, requirement, limitation or other condition affecting the freedom of any person or his property;

(2) withholding of relief;

(3) imposition of any form of penalty;

(4) destruction, taking, seizure or withholding of property;

(5) assessment of damages, reimbursement, restitution, compensation, taxation, costs, charges or fees;

(6) requirement, revocation, amendment, limitation or suspension of a license; or

(7) taking or withholding of other compulsory, restrictive or discretionary action;

K. "relief" includes the whole or part of any agency:

(1) grant of money, assistance, license, authority, exemption, exception, privilege or remedy;

(2) recognition of any claim, right, interest, immunity, privilege, exemption or exception; or

(3) taking of any other action upon the application or petition of, and beneficial to, any person;

L. "agency proceedings" means any agency process in connection with rulemaking, orders, adjudication, licensing, imposition or withholding of sanctions or the granting or withholding of relief; and

M. "agency action" includes the whole or part of every agency, rule, order, license, sanction or relief, or the equivalent or denial thereof, or failure to act.

History: 1953 Comp., § 4-32-2, enacted by Laws 1969, ch. 252, § 2.

Cross-references. - For applicability of act, see 12-8-23 NMSA 1978.

Act inapplicable to regents of museum of New Mexico. - The Administrative Procedures Act is not applicable to the actions of the board of regents of the museum of New Mexico since that act is applicable only to agencies specifically placed by law under the Administrative Procedures Act. Livingston v. Ewing, 98 N.M. 685, 652 P.2d 235 (1982).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For survey, "Administrative Law," see 6 N.M. L. Rev. 401 (1976).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

§ 12-8-3. Rulemaking requirements.

In addition to other rulemaking requirements imposed by law, each agency shall:

A. adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

B. set forth in written form all statements of general policy adopted as authorized by law, including a description of its central and field organization, statements of all delegations

of authority and the extent thereof, together with a listing of the established places at which, and the methods whereby, the public may secure information or make submittals or requests;

C. provide written statements of the general course and method by which its functions are channeled and determined, as well as make available all required or suggested forms, together with proper instructions pertaining thereto; and make available for public inspection all rules and other written statements of policy or written interpretations formulated, adopted or used by the agency in the discharge of its functions;

D. except as otherwise provided by law, make available for public inspection all final orders, decisions and opinions issued after the effective date of the Administrative Procedures Act, together with all materials that were before the deciding officers at any time prior to the making of the decision;

E. provide a reasonable manner at a reasonable cost for interested persons to obtain copies of items set forth in this section; and

F. not act in any manner or in any matter except in strict conformity with the rules and other written statements or items required in this section, and no person shall in any manner be required to resort to any procedure or be otherwise affected by any agency action not in strict conformity with the requirements of this section.

History: 1953 Comp., § 4-32-3, enacted by Laws 1969, ch. 252, § 3.

Law reviews. - For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Administrative Law §§ 92 to 137.
Estoppel doctrine as applicable against government and its governmental agencies, 1 A.L.R.2d 338.
Sunday or holiday, validity of administrative proceedings conducted on, 26 A.L.R.2d 996.
Exceptions under 5 USCS § 553(b)(A) and § 553(b)(B) to notice requirements of administrative procedure act rule making provisions, 45 A.L.R. Fed. 12.
73 C.J.S. Public Administrative Law and Procedure §§ 87 to 114.

§ 12-8-4. Rulemaking prerequisites.

A. Prior to the adoption, amendment or repeal of any rule, the agency shall, within the time specified by law, or if no time is specified, then at least thirty days prior to its proposed action:

(1) publish notice of its proposed action in the manner specified by law, or if no manner

is specified, then in newspapers or trade, industrial or professional publications as will reasonably give public notice to interested persons; and

(2) notify any person specified by law, and, in addition, any person or group filing written request, the request to be renewed yearly as the agency directs by rule, for notice of proposed action which may affect that person or group, notification being by mail or otherwise to the last address specified by the person or group. The notice shall:

(a) give the time and place of any public hearing or state the manner in which data, views or arguments may be submitted to the agency by any interested person;

(b) either state the express terms or adequately describe the substance of the proposed action, or adequately state the subjects and issues involved; and

(c) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed; and

(3) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and examine witnesses, unless otherwise provided by law. If the agency finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule contested at hearing or otherwise, the agency shall issue a concise statement of its principal reasons for adoption of the rule and a statement of positions rejected in adopting the rule together with the reasons for the rejections. All persons heard or represented at any hearing, or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the decision, by mail or otherwise.

B. If the agency finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, or if the agency for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule, amendment or suspension filed under Section 5 [12-8-5 NMSA 1978] of the Administrative Procedures Act. Upon adoption of an emergency rule, amendment or suspension which shall remain in effect for longer than sixty days, notice shall be given within seven days as required in this section for proposed rules.

History: 1953 Comp., § 4-32-4, enacted by Laws 1969, ch. 252, § 4.

Effect of failure to comply with statutory procedures. - Where the board of cosmetology failed to (1) comply with the repeal procedure of this section, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by 14-4-5 NMSA 1978, the action of the board in repealing a licensing reciprocity

regulation was contrary to law and the repeal was invalid. Rivas v. Board of Cosmetologists, 101 N.M. 592, 686 P.2d 934 (1984).

Subsection B does not apply to the Savings and Loan Act (Article 10, Chapter 58 NMSA 1978). State v. Grissom, 106 N.M. 555, 746 P.2d 661 (Ct. App. 1987).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 279 to 285.
Exceptions under 5 USCS § 553(b)(A) and § 553(b)(B) to notice requirements of administrative procedure act rule making provisions, 45 A.L.R. Fed. 12.
73 C.J.S. Public Administrative Law and Procedure §§ 103 to 110.

§ 12-8-5. Filing of rules; when effective.

A. Each agency shall file each rule, amendment or repeal thereof, adopted by it, including all rules existing on the effective date of the Administrative Procedures Act, according to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] unless the rules have already been so filed.

B. Each rule hereafter adopted is effective fifteen days after filing, unless a longer time is provided by the rule, and compliance with other law.

History: 1953 Comp., § 4-32-5, enacted by Laws 1969, ch. 252, § 5.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 73 C.J.S. Public Administrative Law and Procedure § 114.

§ 12-8-6. Publication of rules.

A. The state records administrator:

(1) shall compile and publish all effective rules adopted by each agency. Compilations shall be supplemented or revised as often as necessary and at least once every two years;

(2) shall publish a bimonthly bulletin setting forth the text of all rules filed during the preceding month, excluding rules in effect upon the adoption of the Administrative Procedures Act; and

(3) may omit from the bulletin or compilation any rule, the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule, in printed or processed form, is made available on application to the adopting agency and if the bulletin or compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

B. Bulletins and compilations shall be made available upon request to state agencies, institutions and political subdivisions free of charge and to other persons at prices fixed by the state records administrator to cover mailing and publication costs.

History: 1953 Comp., § 4-32-6, enacted by Laws 1969, ch. 252, § 6.

Cross-references. - As to publication of New Mexico register by state records administrator, see 14-4-7.1 NMSA 1978.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 287. 73 C.J.S. Public Administrative Law and Procedure § 112.

§ 12-8-7. Petitions for adoption, amendment or repeal of rules.

Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule and may accompany his petition with data, views and arguments he thinks pertinent. Within thirty days after the submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 4 [12-8-4 NMSA 1978] of the Administrative Procedures Act.

History: 1953 Comp., § 4-32-7, enacted by Laws 1969, ch. 252, § 7.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 288. Exceptions under 5 USCS § 553(b)(A) and § 553(b)(B) to notice requirements of administrative procedure act rule making provisions, 45 A.L.R. Fed. 12.

§ 12-8-8. Judicial review by declaratory judgment; granting relief not otherwise provided for.

A. Unless otherwise provided by law, the validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of Santa Fe county, if the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the interests, rights or privileges of the plaintiff. Any representative association, including but not limited to trade associations, labor unions or professional organizations, may file the action if one or more of its members could qualify as a plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

B. The district court of Santa Fe county may enter orders after reasonable notice and hearing upon any matter not otherwise provided for in the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978], including but not limited to procedural or substantive matters of law or equity. This right may be utilized at any stage of a proceeding, and failure to utilize the right until final decision, action or order shall not be deemed a waiver thereof. If such questions are raised upon review or appeal in the court of appeals, the court of appeals may enter any orders which could have been entered by the district court.

History: 1953 Comp., § 4-32-8, enacted by Laws 1969, ch. 252, § 8.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 22A Am. Jur. 2d Declaratory Judgments §§ 89 to 91, 93, 96 to 98, 100, 120.
73 C.J.S. Public Administrative Law and Procedure §§ 44, 93.

§ 12-8-9. Agency declaratory rulings.

Each agency shall by rule establish a system for declaratory rulings as to the applicability of any statutory provision, rule, decision or order. Such rulings shall be issued upon petition by one whose interests, rights or privileges are immediately at stake, except when the agency for good cause finds issuance of such a ruling undesirable. The rule shall permit the declaratory proceeding to be prosecuted by any party having the right to prosecute an action under Section 8 [12-8-8 NMSA 1978] of the Administrative Procedures Act. The agency shall prescribe in its rule the circumstances in which the rulings shall or shall not be issued. Declaratory rulings disposing of petitions have the same status as agency decisions or orders in adjudicatory proceedings and are subject to judicial review.

History: 1953 Comp., § 4-32-9, enacted by Laws 1969, ch. 252, § 9.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

§ 12-8-10. Adjudicatory proceedings.

A. In conducting adjudicatory proceedings, agencies shall afford all parties an opportunity for full and fair hearing. Unless otherwise provided by any law, agencies:

(1) may place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing;

(2) may make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement, consent order or default;

(3) may limit the issues to be heard or vary the procedures prescribed by Subsection B if the parties agree to the limitation or variation;

(4) shall allow any person showing that he will be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and may allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose the agency may order; and

(5) shall upon demand by any party require any or all parties, including the agency involved, to advise the names of witnesses it proposes to call at any adjudicatory hearing, together with the gist of testimony or type of testimony expected to be elicited from each witness. Any party shall likewise be required upon demand to advise of and produce for examination or copying any exhibits the party anticipates using. Such demanded information shall be made available at least ten days prior to the hearing. Other discovery or pretrial conferences and procedures available in the district courts may also be utilized upon demand by any party.

B. In adjudicatory proceedings, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the matters of fact and law asserted so that all have sufficient notice of the issues involved to afford them reasonable opportunity to prepare. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full

statement or amendment to afford all parties reasonable opportunity to prepare; and

(4) in instances in which private parties are the moving parties, other parties to the proceedings shall give prompt notice of issues controverted in fact or law, and in other instances, agencies may by rule require responsive pleadings by the parties.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. The record in adjudicatory proceedings shall include:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and conclusions; and

(6) any decision, opinion or report by the agency conducting the hearing.

E. The agency need not arrange to transcribe notes or sound recordings unless requested by a party. The cost of the transcript to parties shall not exceed the cost provided by law chargeable by official court reporters.

F. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

History: 1953 Comp., § 4-32-10, enacted by Laws 1969, ch. 252, § 10.

Sound recordings. - Sound recordings are apparently acceptable under Administrative Procedures Act, 12-8-1 to 12-8-25 NMSA 1978. State, Dep't of Motor Vehicles v. Gober, 85 N.M. 457, 513 P.2d 391 (1973).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 315 to 339.
Right to statement of reasons, under Administrative Procedure Act (5 USCS § 555(e)), for denial of written application, petition, or other request of interested person made in connection with agency proceeding, 57 A.L.R. Fed. 765.
73A C.J.S. Public Administrative Law and Procedure §§ 115 to 171.

§ 12-8-11. Procedures; evidence.

In adjudicatory proceedings:

A. irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil actions in the district courts shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. No greater exclusionary effect shall be given any rule or privilege than would obtain in an action in the district court. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

B. all evidence, including any records, investigation reports and documents in the possession of the agency, of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in Subsections C and D of this section. Documentary evidence may be received in evidence in the form of copies or excerpts, or by specific citation to page numbers in published documents;

C. every party may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence;

D. official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency, but whenever any officer or agency takes official notice of a fact, the noticed fact and its source shall be stated at the earliest practicable time, before or during the hearing, but before the final report or decision, and any party shall, on timely request, be afforded an opportunity to show the contrary;

E. the experience, technical competence and specialized knowledge of the agency and its staff may be utilized in the evaluation of the evidence;

F. any party may be represented by counsel licensed to practice law in the state or by any other person authorized by law;

G. if a person who has requested a hearing does not appear and no continuance has been granted, the agency may hear the evidence of witnesses who appear, and the agency may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978]. Where because of accident, sickness or other good cause, a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the agency to reopen the proceeding, and the agency, upon finding the cause sufficient, shall immediately fix a time and place for hearing and give the person notice as required by Section 10 [12-8-10 NMSA 1978] of the Administrative Procedures Act. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing;

H. in fixing the times and places for hearings, due regard shall be given to the convenience of the parties or their representatives;

I. where relief or procedure is not otherwise provided for, rules of practice and procedure applicable to civil actions in the district court may be utilized by the parties at any stage of any proceeding, and if refused by the agency, then upon application to any district court having jurisdiction of the places of residence of a private party for the entry of an order providing for such relief or procedure; and

J. prior to each recommended initial or tentative decision, or decision upon agency review at any later stage of any agency proceeding, the parties shall be afforded a reasonable opportunity to submit, for the consideration of the agency member or employee participating in the decisions, briefs including:

(1) proposed findings of fact and law, together with supporting reasons therefor including citations to the record and of law; and

(2) in all cases where recommended initial decisions or tentative decision is subject to further agency review, exceptions to the decisions or recommended decisions and supporting reasons for such exceptions.

The record shall include all briefs, proposed findings and exceptions and shall show the ruling upon each finding, exception or conclusion presented. All decisions at any stage of any proceeding become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all material issues of fact, law or discretion involved, together with the appropriate rule, order, sanction, relief or the denial thereof.

History: 1953 Comp., § 4-32-11, enacted by Laws 1969, ch. 252, § 11.

Standard for admissibility of evidence. - While standard for admissibility in an administrative hearing under this act is one of whether the evidence has any probative

value, New Mexico courts require that an administrative action be supported by some evidence that would be admissible in a jury trial, a requirement referred to as the legal residuum rule. Duke City Lumber Co. v. New Mexico Envtl. Imp. Bd., 101 N.M. 291, 681 P.2d 717 (1984).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M. L. Rev. 103 (1979-80).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 376 to 396, 424.
Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.
Administrative decision by officer not present when evidence was taken, 18 A.L.R.2d 606.
Surveys and polls: weight, in administrative proceeding, of evidence of surveys or polls of public or consumers' opinion, recognition, preference, or the like, 76 A.L.R.2d 633.
Hearsay evidence in proceedings before state administrative agencies, comment note on, 36 A.L.R.3d 12.
73A C.J.S. Public Administrative Law and Procedure §§ 125 to 142.

§ 12-8-12. Decision.

No agency or member thereof shall:

A. participate in a final decision in an adjudicatory proceeding unless he has heard the evidence or read the record. A final decision or order in an adjudicatory proceeding shall be in writing or stated in the record. A final or tentative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules or practice or as authorized by the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978], a party submits proposed findings of fact and conclusions of law, the agency shall rule upon each proposed finding and conclusion. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed forthwith to each party or to his attorney of record; or

B. impose any sanction or substantive rule or order except within jurisdiction delegated to the agency and as authorized by law.

History: 1953 Comp., § 4-32-12, enacted by Laws 1969, ch. 252, § 12.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 434 to 472.
Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.
Stare decisis doctrine as applicable to decisions of administrative agencies, 79 A.L.R.2d 1126.
73A C.J.S. Public Administrative Law and Procedure §§ 143 to 153.

§ 12-8-13. Ex-parte consultations.

No party or representative of a party or any other person shall communicate off the record about the case with any agency member who participates in making the decision in any adjudicatory proceeding unless a copy of the communication is sent to all parties to the proceeding. No agency member or representative of the agency shall communicate off the record about the adjudicatory proceedings with any party or representative of a party or any other person unless a copy of the communication is sent to all parties in the proceeding.

History: 1953 Comp., § 4-32-13, enacted by Laws 1969, ch. 252, § 13.

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Propriety of ex parte communication made in connection with administrative proceeding by interested party or by member or employee of agency (5 USCS § 557(d)(1)), 58 A.L.R. Fed. 834.

§ 12-8-14. Licenses.

A. Unless otherwise provided by law, no agency shall revoke, suspend or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with Sections 10, 11, 12, 13 and 15 [12-8-10 to 12-8-13 and 12-8-15 NMSA 1978] of the Administrative Procedures Act. Unless otherwise provided by law, if a licensee has, in accordance with any law and with agency regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend or revoke a license without first holding a hearing shall, upon exercising such authority, promptly afford the licensee an opportunity for hearing in conformity with Sections 10, 11, 12, 13 and 15 of the Administrative Procedures Act. The requirement of a hearing

does not apply where the action taken by the agency is required by law and no discretion is vested in the agency.

B. Every applicant for a license, except applicants for reinstatement after revocation, shall be afforded an opportunity for hearing in conformity with Sections 10, 11, 12, 13 and 15 of the Administrative Procedures Act before any agency may take any action, the effect of which would be to deny:

(1) permission to take an examination for licensing for which application has been made;

(2) a license after examination for any cause other than failure to pass an examination; or

(3) a license for which application has been made on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification.

C. When an agency contemplates taking any action, contemplated in Subsection B of this section, it shall give to the applicant written notice as provided in Section 10 of the Administrative Procedures Act, which shall include a statement:

(1) that the applicant has failed to satisfy the agency of his qualifications to be examined or to be issued a license, as the case may be;

(2) that indicates in what respects the applicant has failed to satisfy the agency;

(3) that the applicant may secure a hearing before the agency by depositing in the mail, within twenty days after service of the notice, a certified letter addressed to the agency and containing a request for a hearing; and

(4) calling the applicant's attention to his rights under Sections 10 and 11 of the Administrative Procedures Act.

In any agency proceeding involving the denial of an application to take an examination or for a license on the basis of reciprocity or endorsement or a national certificate of qualification, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the agency of the applicant's qualifications is upon the applicant.

History: 1953 Comp., § 4-32-14, enacted by Laws 1969, ch. 252, § 14.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 51 Am. Jur. 2d Licenses and Permits §§ 138 to 141.
53 C.J.S. Licenses §§ 43, 59 to 60.

§ 12-8-15. Depositions; subpoenas; inspection of agency files; disqualifications.

A. The agency conducting proceedings under the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978] may, subject to rules of privilege and confidentiality recognized by law, requiring [require] the furnishing of information, the attendance of witnesses and the production of books, records, papers or other objects necessary and proper for the purposes of the proceeding. The agency, in any proceeding, or any party to an adjudicatory proceeding before it, may take the depositions of witnesses, including parties, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in the district court, and they may be used in the same manner and to the same extent as permitted in the district court.

B. In furtherance of the powers granted by Subsection A of this section, agencies may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Agencies may administer oaths and affirmations, examine witnesses and receive evidence. The power to issue subpoenas may be exercised by any member of the agency or by any person or persons designated by the agency for the purpose.

C. The agency may prescribe the form of subpoena, but it shall adhere, insofar as practicable, to the form used in civil actions in the district court unless another manner is provided by any law. Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided by any law.

D. Any party to an adjudicatory proceeding is entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. Upon written application to the agency, it shall forthwith issue the subpoenas requested. However issued, the subpoena shall show upon its face the name and address of the party at whose request the subpoena was issued. Unless otherwise provided by any law, the agency need not pay fees for attendance and travel to witnesses summoned by a party.

E. Any witness summoned may petition the agency or the district court of the county where he resides or, in the case of a corporation, the county where it has its principal office, to vacate or modify a subpoena served on the witness. The agency shall give prompt notice to the party, if any, who requested issuance of the subpoena. After investigation the agency considers appropriate, it may grant the petition in whole or part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested or for any other reason that justice requires.

F. In case of disobedience to any subpoena issued and served under this section or to

any lawful agency requirement for information, or for the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an agency, the agency may apply to the district court in the county of the person's residence for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith, the district court shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unlawful, the district court shall enter an order requiring compliance in full or as modified. Disobedience of the court order shall be punished as contempt of the district court in the same manner and by the same procedure as provided for like conduct committed in the course of judicial proceedings.

G. Agency files and records, including but not limited to investigation reports, statements, memoranda, correspondence or other data pertaining to the matter under consideration scheduled for hearing or other agency action, shall be available for inspection and copying by any party of interest or other person affected by the pending matter, at all reasonable times prior to, during or after any hearing, proceeding or other proposed agency action. If the agency or any party asserts that any such information contained in the agency files and records should not be made available for any reason of confidentiality or privilege recognized by law, the question shall be determined by the district court of the county in which the requesting party resides, upon application by the party requesting the information and after hearing thereon following reasonable notice to the party asserting confidentiality or privilege.

H. No officer, employee or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or agency review except as a witness or counsel in a public proceeding. Additionally, any hearing examiner, member of a review board or agency member shall withdraw from any proceedings in which he cannot accord a fair and impartial hearing or consideration. Any party may request a disqualification of any hearing examiner, member of a review board or agency member on the grounds of the person's inability to be fair and impartial by filing an affidavit promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds upon which it is claimed that the person cannot be fair and impartial. The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit of disqualification. The agency shall, by rule, provide for the appointment of a fair and impartial replacement for the person disqualified. If the replacement is disqualified, or in any case not otherwise provided for, a replacement shall be appointed by a justice of the supreme court.

History: 1953 Comp., § 4-32-15, enacted by Laws 1969, ch. 252, § 15.

Cross-references. - As to per diem and mileage for witnesses, see 38-6-4 NMSA 1978. As to privileges generally, see 38-6-6, 38-6-7 NMSA 1978 and Rules 11-501 to 11-514. As to depositions generally, see Rules 1-026 to 1-032. As to subpoenas, see Rule 1-045.

Administrative Procedures Act demonstrates that depositions are permissible under administrative law, to assist the agency and other parties in obtaining a fair hearing. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Employers may be present at discovery proceedings conducted by the environmental improvement division. Kent Nowlin Constr., Inc. v. Environmental Imp. Div., 99 N.M. 294, 657 P.2d 621 (1982).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 421.
Subpoenas: power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction, 27 A.L.R.2d 1208.
Power of court under 5 USCS § 552(a)(4)(B) to examine agency records in camera to determine propriety of withholding records, 60 A.L.R. Fed. 416.
73A C.J.S. Public Administrative Law and Procedure §§ 124, 132.

§ 12-8-16. Petition for judicial review.

A. 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, whether the order or decision is affirmative or negative in form, is entitled to certain, speedy, adequate and complete judicial review thereof under the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978], but nothing in this section prevents resort to other means of review, redress or relief available because of constitutional provisions or otherwise prescribed by statute. A preliminary procedural or intermediate action or ruling is immediately reviewable if it practically disposes of the merits of the action.

B. Any party also has a right to judical review, including relief deemed appropriate, at any stage of any agency proceeding or other matter before the agency and prior to a final order or decision, or the exhausting of administrative remedies or procedures, upon a showing of serious and irreparable harm, or the lack of an adequate and timely remedy otherwise or upon a showing of other good cause to the satisfaction of the court if the party was required to await a final order or decision or was required to exhaust administrative remedies or procedures.

C. Except as the constitution or statutes specifically preclude judicial review or action, any person suffering legal wrong because of any agency action or inaction or adversely affected or aggrieved by the action or inaction, within the meaning of any relevant statute or constitutional provision, is entitled to judicial review thereof and relief.

D. All preliminary, procedural or intermediate agency actions or rulings, whether or not directly reviewable, are subject to judicial review upon the review of any final agency action or decision. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this section whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration or for an appeal to superior agency authority, unless the agency has legally required otherwise by rule and has provided that such action meanwhile shall be inoperative.

E. The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute, or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments, writs of prohibition or mandatory injunction, or habeas corpus or by appeal to the court of appeals.

F. In all instances of review by appeal from an agency order or decision under the Administrative Procedures Act, unless otherwise provided by law, proceedings shall be instituted by filing a notice of appeal in the court of appeals within thirty days after the entry of the final agency order or decision.

The notice of appeal shall include a concise statement of the facts upon which jurisdiction is based, facts showing that petitioner is aggrieved and the ground or grounds specified in Section 22 [12-8-22 NMSA 1978] of the Administrative Procedures Act upon which petitioner contends he is entitled to relief. The notice shall demand the relief to which petitioner believes he is entitled, which demand may be in the alternative. Copies of the notice shall be served, personally or by certified mail, upon all parties to the agency proceeding no later than ten days after the institution of the proceeding for review. For the purpose of such service, the agency upon request shall certify to the appellant the names and addresses of all parties as disclosed by its records, and service upon parties so certified is sufficient, and proof of service shall be filed in the court of appeals within twenty days after the filing of the petition.

History: 1953 Comp., § 4-32-16, enacted by Laws 1969, ch. 252, § 16.

Only those agencies specifically placed by law under Administrative Procedures Act are subject to its provisions. Since public employees retirement board had not been placed under the act, nor subjected to its provisions, court of appeals did not have jurisdiction to review decisions of that agency. Mayer v. Public Employees Retirement Bd., 81 N.M. 64, 463 P.2d 40 (Ct. App. 1970).

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under 7-1-25 NMSA 1978 of the Tax Administration Act. Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

Section not applicable to determinations of labor commissioner. - This section does not allow a judicial appeal of determinations of the labor commissioner, since the Administrative Procedures Act applies only to an agency made subject to the act by agency rule or regulation, if permitted by law, or an agency specifically placed by law under the act, and the labor commissioner is not such an agency. Eastern Indem. Co. v. Heller, 102 N.M. 144, 692 P.2d 530 (Ct. App. 1984).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 553 to 582.
Computation of time: exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting administrative appeal or review, 61 A.L.R.2d 484.
Court review of administrative decision, effect of, 79 A.L.R.2d 114.
73A C.J.S. Public Administrative Law and Procedure §§ 172 to 201.

§ 12-8-17. Intervention.

Within thirty days after service of the notice of appeal, any party served who desires to participate in the review proceeding shall serve upon the petitioner and the agency, and file in the court of appeals, a response to the petition, stating his interest and the position he takes with respect to the agency decision under review. Service of all subsequent papers or notices in the review proceeding need be made only upon the agency and the parties to the review proceedings who file an entry of appearance or other pleading with the court of appeals.

History: 1953 Comp., § 4-32-17, enacted by Laws 1969, ch. 252, § 17.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 743.
Employee's right to intervene in federal judicial proceeding concerning labor arbitration, 59 A.L.R. Fed. 733.
73A C.J.S. Public Administrative Law and Procedure § 193.

§ 12-8-18. Stay of enforcement of agency decision.

The filing of a notice of appeal does not itself stay enforcement of the agency decision, but the agency may grant, or the court of appeals may order a stay upon appropriate terms it deems necessary.

History: 1953 Comp., § 4-32-18, enacted by Laws 1969, ch. 252, § 18.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 740.
73A C.J.S. Public Administrative Law and Procedure § 195.

§ 12-8-19. Record of proceeding.

A. Within thirty days after the service of the petition or within such further time as the court of appeals may allow, the agency shall file in the court the original or a certified copy of the record of the proceedings under review. The record on appeal shall consist of:

(1) the entire proceedings; or

(2) portions thereof the agency and the parties may stipulate; or

(3) a statement of the case agreed to by the agency and the parties.

B. The expense of preparing the record may be assessed as part of the costs in the action, and the court of appeals may, regardless of the outcome of the action, assess anyone unreasonably refusing to stipulate to limit the record for the additional expenses of preparation caused by the refusal. The court may require or permit subsequent corrections of the record when necessary.

History: 1953 Comp., § 4-32-19, enacted by Laws 1969, ch. 252, § 19.

Law reviews. - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 722.
Appealability under "collateral order" doctrine of order staying or dismissing, or refusing to stay or dismiss, proceedings in United States District Court pending federal or state administrative determination, 40 A.L.R. Fed. 740.
73A C.J.S. Public Administrative Law and Procedure §§ 197, 198.

§ 12-8-20. Additional evidence.

If, before the date set for hearing, application is made to the court of appeals for leave to present additional evidence, and it is shown to the satisfaction of the court of appeals

that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the agency, the court of appeals may order that the additional evidence be taken before the agency upon conditions the court of appeals deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the court of appeals, to become a part of the record, the additional evidence, together with any modified or new findings or decision.

History: 1953 Comp., § 4-32-20, enacted by Laws 1969, ch. 252, § 20.

Limitation on presentation of additional evidence. - Additional evidence not presented at state corporation commission hearing, nor offered under a recognized exception, may not later be heard by the district court sitting in the posture of an appellate court. Groendyke Transp., Inc. v. SCC, 101 N.M. 470, 684 P.2d 1135 (1984).

§ 12-8-21. Conduct of review; proceedings.

The review shall be confined to the record, except that, in cases of alleged irregularities in the procedure before the agency not shown in the record, testimony thereon may be taken if the review is in the district court.

History: 1953 Comp., § 4-32-21, enacted by Laws 1969, ch. 252, § 21.

Administrative Procedures Act does not prohibit receipt and consideration of otherwise admissible evidence by a court of general jurisdiction in the exercise of its original jurisdiction over an extraordinary remedy such as prohibition. City of Albuquerque v. SCC, 93 N.M. 719, 605 P.2d 227 (1979).

Limitation on presentation of additional evidence. - Additional evidence not presented at state corporation commission hearing, nor offered under a recognized exception, may not later be heard by the district court sitting in the posture of an appellate court. Groendyke Transp., Inc. v. SCC, 101 N.M. 470, 684 P.2d 1135 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law § 697. 73A C.J.S. Public Administrative Law and Procedure § 218.

§ 12-8-22. Scope of review.

A. In any proceeding for review of an agency decision or order, the court may set aside the order or decision, or reverse or remand it to the agency for further proceedings or may compel agency action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of a party to review proceedings have been prejudiced because the agency findings, inferences, conclusions or decisions are:

(1) in violation of constitutional provisions;

(2) in excess of the statutory authority or jurisdiction of the agency or otherwise not in accordance with law;

(3) made upon unlawful procedure, including failure to follow the provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978];

(4) affected by other error of law;

(5) unsupported by substantial evidence; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or upon a showing of substantial bias or prejudice.

The reviewing court shall make the foregoing determinations upon consideration of the entire record, or portions of the record cited by the parties. The court may give due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.

B. The reviewing court may remand the case to the agency for the taking and consideration of further evidence if it is deemed essential to a proper disposition of the issue.

C. The reviewing court shall affirm the order or decision of the agency if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

D. The reviewing court shall compel agency action unlawfully withheld or unreasonably delayed.

History: 1953 Comp., § 4-32-22, enacted by Laws 1969, ch. 252, § 22.

Meaning of "substantial evidence". - "Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In resolving these arguments of appellant, the supreme court will not weigh the evidence. By definition, the inquiry is whether, on the record, the administrative body could reasonably make the findings, and special weight and credence will be given to the experience, technical competence and specialized knowledge of the commission. Rutter & Wilbanks Corp. v. Oil Conservation Comm'n, 87 N.M. 286, 532 P.2d 582 (1975).

Appeal from human rights commission is trial de novo. - Appeal from decision of human rights commission is not restricted to grounds for relief set forth in this section, but is by trial de novo. Therefore, school district was not required to state grounds for its appeal from commission's decision, and its notice of appeal was effective to give district court jurisdiction to try the case de novo. Linton v. Farmington Mun. Schools, 86 N.M. 748, 527 P.2d 789 (1974).

Appellate court must make same review of agency's determination as district court. Groendyke Transp., Inc. v. SCC, 101 N.M. 470, 684 P.2d 1135 (1984); Tapia v. City of Albuquerque, 104 N.M. 117, 717 P.2d 93 (Ct. App. 1986).

Law reviews. - For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M. L. Rev. 103 (1979-80).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For article, "Substantial Evidence Reconsidered: The Post-Duke City Difficulties and Some Suggestions for Their Resolution," see 18 N.M.L. Rev. 525 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 2 Am. Jur. 2d Administrative Law §§ 610 to 622.
73A C.J.S. Public Administrative Bodies and Procedure §§ 213 to 240.

§ 12-8-23. Applicability of act.

The provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978] apply to agencies made subject to its coverage by law, or by agency rule or regulation if permitted by law.

In the event of any conflict between any existing law and the provisions of the Administrative Procedures Act, the provisions of the Administrative Procedures Act control unless specific exceptions are enumerated in the law or rule which makes an agency subject to the provisions of the Administrative Procedures Act, or unless a later law provides specific exceptions.

History: 1953 Comp., § 4-32-23, enacted by Laws 1969, ch. 252, § 23.

Only those agencies as are specifically placed by law under Administrative Procedures Act are subject to its provisions. Since public employees retirement board had not been placed under the act, nor subjected to its provisions, court of appeals did not have jurisdiction to review decisions of that agency. Mayer v. Public Employees Retirement Bd., 81 N.M. 64, 463 P.2d 40 (Ct. App. 1970).

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under 7-1-25 NMSA 1978 of the Tax Administration Act. Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

Act inapplicable to regents of museum of New Mexico. - The Administrative Procedures Act is not applicable to the actions of the board of regents of the museum of New Mexico since that act is applicable only to agencies specifically placed by law under the Administrative Procedures Act. Livingston v. Ewing, 98 N.M. 685, 652 P.2d 235 (1982).

Law reviews. - For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For article, "A Survey of the Securities Act of New Mexico," see 2 N.M. L. Rev. 1 (1972).

For article, "Mandamus in New Mexico," see 4 N.M. L. Rev. 155 (1974).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

§ 12-8-24. Amending and repealing.

The provisions of the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978] may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of the Administrative Procedures Act being amended, repealed or superseded.

History: 1953 Comp., § 4-32-24, enacted by Laws 1969, ch. 252, § 24.

§ 12-8-25. Purpose of act; liberal interpretation.

The legislature expressly declares its purpose in enacting the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978] is to promote uniformity with respect to administrative procedures and judicial review of administrative decisions, and the Administrative Procedures Act shall be liberally construed to carry out its purpose.

History: 1953 Comp., § 4-32-25, enacted by Laws 1969, ch. 252, § 25.

Article 9

Sunset Act

§§ 12-9-1 to 12-9-10. Repealed.

Repeals. - Laws 1981, ch. 241, § 35, repeals 12-9-1 to 12-9-10 NMSA 1978, relating to the New Mexico Sunset Law, effective April 8, 1981. For present provisions, see 12-9-11 to 12-9-21 NMSA 1978.

§ 12-9-11. Short title.

Sections 1 through 11 [12-9-11 to 12-9-21 NMSA 1978] of this act may be cited as the "Sunset Act."

History: Laws 1981, ch. 241, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Administrative Law § 84. 73 C.J.S. Administrative Law and Procedure § 9.

§ 12-9-12. Findings of fact.

The legislature finds that state government actions have produced a substantial increase in numbers of programs and a proliferation of rules and regulations and that the whole process has developed in a haphazard, piecemeal fashion resulting in overlapping and duplication without regulatory accountability or a system of checks and balances. The legislature further finds that by establishing a system for periodic review of certain separate administratively attached and adjunct agencies, it will be in a better position to evaluate the need for the continued existence of the regulatory agencies covered by the Sunset Act [12-9-11 to 12-9-21 NMSA 1978].

History: Laws 1981, ch. 241, § 2.

§ 12-9-13. Termination of agencies on July 1, 1983.

Notwithstanding other provisions of law, the following regulatory agencies shall terminate on July 1, 1983 or, if extended by the legislature, on the subsequent date set for termination:

A. the board of examiners for architects or its successor board;

B. the board of barber examiners or its successor board;

C. the board of cosmetologists or its successor board;

D. the state board of thanotopractice [thanatopractice] of the state of New Mexico or its successor board;

E. the state board of registration for professional engineers and land surveyors or its successor board;

F. the New Mexico state board of public accountancy or its successor board;

G. the New Mexico real estate commission or its successor board;

H. the data processing and data communications planning council or its successor board;

I. the New Mexico athletic commission or its successor board; and

J. the construction industries committee and division [of the regulation and licensing department] and its trade bureaus or their successors.

History: Laws 1981, ch. 241, § 3.

Cross-references. - As to renewal of agency life, see 12-9-18 NMSA 1978. As to termination of New Mexico athletic commission, see 60-2A-30 NMSA 1978.

Construction industries division. - The construction industries division, referred to in Subsection J, was originally part of the commerce and industry department. This department was abolished by Laws 1983, ch. 297, § 33. Laws 1983, ch. 297, § 20, creates the regulation and licensing department, consisting of several divisions, including the construction industries division. Laws 1983, ch. 297, § 31, provides that all references in law to the construction industries division of the commerce and industry department shall be construed to be references to the same division within the regulation and licensing department. See 9-16-4 NMSA 1978 and notes thereto.

§ 12-9-14. Termination of agencies on July 1, 1985.

Notwithstanding other provisions of law, the following regulatory agencies shall terminate on July 1, 1985 or, if extended by the legislature, on the subsequent date set for termination:

A. the board of optometry or its successor board;

B. the board of podiatry or its successor board;

C. the board of nursing or its successor board;

D. the New Mexico state board of psychologist examiners or its successor board;

E. the chiropractic board or its successor board;

F. the board of dentistry or its successor board;

G. the New Mexico board of medical examiners or its successor board;

H. the board of osteopathic medical examiners or its successor board;

I. the board of pharmacy or its successor board;

J. the physical therapists' licensing board or its successor board;

K. the state board of nursing home administrators or its successor board; and

L. the board of veterinary examiners or its successor board.

History: Laws 1981, ch. 241, § 4.

Cross-references. - As to renewal of agency life, see 12-9-18 NMSA 1978.

§ 12-9-15. Termination of agencies on July 1, 1987.

Notwithstanding other provisions of law, the following regulatory agencies shall terminate on July 1, 1987 or, if extended by the legislature, on the subsequent date set for termination:

A. the racing commission or its successor board;

B. the coal surface mining commission or its successor board;

C. the human rights commission or its successor board;

D. the labor and industrial commission and the office of labor commissioner or their respective successors;

E. the department of alcoholic beverage control or its successor department;

F. the water quality control commission or its successor commission;

G. the New Mexico livestock board or its successor board; and

H. the manufactured housing committee and division [mobile housing division of the regulation and licensing department] or their successors.

History: Laws 1981, ch. 241, § 5; 1983, ch. 295, § 5.

Cross-references. - As to renewal of agency life, see 12-9-18 NMSA 1978.

Manufactured housing division. - The manufactured housing division, referred to in Subsection H, was created as the successor to the mobile housing division of the commerce and industry department by Laws 1983, ch. 295, § 4. This department was abolished by Laws 1983, ch. 297, § 33. Laws 1983, ch. 297, § 20, creates the mobile

housing division of the regulation and licensing department. See 9-16-4 NMSA 1978 and notes thereto.

§ 12-9-16. Termination of agencies on July 1, 1989.

Notwithstanding other provisions of law, the public lands board of review or its successor board shall terminate on July 1, 1989 or, if extended by the legislature, on the subsequent date set for termination.

History: Laws 1981, ch. 241, § 6.

Cross-references. - As to renewal of agency life, see 12-9-18 NMSA 1978. As to termination of public lands board of review, see 19-15-10 NMSA 1978.

§ 12-9-17. Wind-up period.

If no action is taken by the legislature to amend the delayed repeal of an agency and its related laws by the date of termination, the agency shall continue until the date of the delayed repeal for the purpose of winding up its affairs. During the wind-up period, the termination shall not reduce or otherwise limit the powers or authority of the agency.

History: Laws 1981, ch. 241, § 7.

Cross-references. - As to existing claims and rights, see 12-9-20 NMSA 1978.

§ 12-9-18. Renewal of agency life.

The life of any agency scheduled for termination under the Sunset Act [12-9-11 to 12-9-21 NMSA 1978] may be continued by the legislature for periods set by the legislature in such manner that the termination occurs on July 1 of an odd-numbered year, and the delayed repeal of the statutes creating the agency and related statutes becomes effective on July 1 of the next following even-numbered year.

History: Laws 1981, ch. 241, § 8.

Cross-references. - As to effect of repeal of repealing act, see 12-2-6 NMSA 1978.

§ 12-9-19. Legislative hearing; action.

A. Prior to the termination of any agency pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978], the legislative finance committee shall hold a public

hearing, receive testimony from the public and the head of the regulatory agency involved and make a recommendation to the next session of the legislature for the termination or continuance of the agency. In such hearing, the agency shall have the burden of demonstrating a public need for its continued existence and the extent to which an amendment of the agency's basic statute may increase the efficiency of the administration or operation of the agency.

B. In making its recommendation to the legislature, the legislative finance committee shall take into consideration all or applicable parts of the following:

(1) the extent to which the agency has permitted qualified applicants to serve the public;

(2) the extent to which the agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures and practices and by budgetary, resources [resource] and personnel matters;

(3) the extent to which the agency has recommended statutory changes to the legislature which would benefit the public as opposed to the persons it regulates;

(4) the extent to which persons regulated by the agency have exercised control over the policies and actions of the agency and the extent to which the agency requires the persons it regulates to report to it concerning the impact of rules and decisions of the agency regarding improved service, economy of service and availability of service;

(5) the extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public;

(6) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(7) the efficiency with which formal public complaints filed with the agency concerning persons subject to regulation have been processed to completion by the agency; and

(8) the extent to which changes are necessary in the enabling laws of the agency to adequately comply with the above factors.

C. The legislative finance committee shall submit legislation for continuation of the agency as an amendment to the delayed repeal section covering the creation of the agency and its related statutes.

History: Laws 1981, ch. 241, § 9.

Cross-references. - As to effect of repeal of repealing act, see 12-2-6 NMSA 1978.

§ 12-9-20. Existing claims and rights.

The Sunset Act [12-9-11 to 12-9-21 NMSA 1978] shall not cause the dismissal of any claim or right of a citizen against any agency specified therein or any claim or right of such agency terminated pursuant to that act which is subject to litigation. The claims and rights of such agency shall be assumed by the department of finance and administration. Nothing in the Sunset Act shall interfere with the legislature otherwise considering legislation on any agency mentioned therein.

History: Laws 1981, ch. 241, § 10.

Cross-references. - For constitutional prohibition against ex post facto laws, see U.S. Const., art. I, § 10 and N.M. Const., art. II, § 19.

§ 12-9-21. Inspection functions; assignment.

The governor may by executive order assign any safety or health inspection function repealed under the terms of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978] to any other appropriate state department or agency within the executive department of state government.

History: Laws 1981, ch. 241, § 11.

§ 12-9-22. Regulation review.

Each agency subject to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978] shall review its rules and regulations periodically and, as a result of that review, update its rules and regulations at least once every three years. Each agency subject to the provisions of the Sunset Act shall submit to the department of finance and administration and the legislative finance committee each year a status report on actions the agency took on its rules and regulations during the last fiscal year.

History: Laws 1989, ch. 288, § 1.

Effective dates. - Laws 1989, ch. 288 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

Article 10

State Civil Emergency Preparedness Act

§ 12-10-1. Short title.

Sections 12-10-1 through 12-10-10 NMSA 1978 may be cited as the "State Civil Emergency Preparedness Act."

History: 1953 Comp., § 9-13-15, enacted by Laws 1959, ch. 190, § 1; 1973, ch. 247, § 1.

Cross-references. - As to creation of the emergency response fund, see 74-4B-12 NMSA 1978.

§ 12-10-2. Purpose.

The purpose of the State Civil Emergency Preparedness Act [12-10-1 to 12-10-10 NMSA 1978] is:

A. to create the emergency planning and coordination bureau of the department of public safety and to authorize the creation of local offices of civil emergency preparedness in the political subdivisions of the state;

B. to confer upon the governor and upon the governing bodies of the state civil emergency preparedness powers;

C. to provide a civil emergency preparedness plan for the protection of life and property adequate to cope with disasters resulting from acts of war or sabotage or from natural or man-made causes other than acts of war;

D. to provide for coordination of all civil emergency preparedness functions of this state with the comparable functions of the federal government, other states and localities and of private agencies;

E. to initiate programs to render aid in the emergency restoration of facilities, utilities and other installations essential to the safety and general welfare of the public; and

F. to provide for assistance and care for persons displaced, left homeless or otherwise victims of disaster or war conditions.

History: 1953 Comp., § 9-13-16, enacted by Laws 1959, ch. 190, § 2; 1973, ch. 247, § 2; 1977, ch. 258, § 6; 1989, ch. 204, § 12.

The 1989 amendment, effective July 1, 1989, substituted "emergency planning and coordination bureau of the department of public safety" for "civil emergency preparedness division of the office of military affairs" in Subsection A.

Division authority not dependent upon local school authorities. - Though close cooperation with school authorities is advisable and not to be discouraged whenever the

protection of pupils may be served, the duties and responsibilities of the office of civil defense (now civil emergency preparedness division) are in no way dependent on or limited by those of the schools. 1970 Op. Att'y Gen. No. 70-9.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 54 Am. Jur. 2d Military, and Civil Defense §§ 354 to 361.
93 C.J.S. War and National Defense § 62.

§ 12-10-3. Emergency planning and coordination bureau.

A. There is created the "emergency planning and coordination bureau" of the department of public safety.

B. The director of the technical and emergency support division of the department of public safety shall be responsible to the secretary for carrying out the program for civil emergency preparedness authorized by law and shall serve as the governor's authorized representative at the discretion of the governor. The emergency planning and coordination bureau chief shall direct and coordinate the civil emergency preparedness activities of all state departments, agencies and political subdivisions and shall maintain liaison with and cooperate with civil emergency preparedness agencies and organizations of other states and of the federal government.

History: 1953 Comp., § 9-13-17, enacted by Laws 1969, ch. 33, § 1; 1973, ch. 247, § 3; 1977, ch. 258, § 7; 1989, ch. 204, § 13.

The 1989 amendment, effective July 1, 1989, substituted the present catchline for "Civil emergency preparedness division"; substituted all of the language of Subsection A beginning with "'emergency"' for "'civil emergency preparedness division' of the office of military affairs"; and in Subsection B rewrote the first sentence, which formerly read: "The adjutant general shall be the director of the civil emergency preparedness division and shall be responsible to the governor for carrying out the program for civil emergency preparedness authorized by law", and substituted "emergency planning and coordination bureau chief" for "director" in the second sentence.

Repeals and reenactments. - Laws 1969, ch. 33, § 1, repeals 9-13-17, 1953 Comp., relating to the creation and administration of a state office of civil and defense mobilization, and enacts the above section.

§ 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 [12-10-1 to 12-10-10 NMSA 1978] and, in the event of disaster beyond local control, 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; 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) 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;

(4) 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 insure 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

(5) enter into mutual aid agreements with other states and to coordinate mutual aid agreements between political subdivisions of the state.

History: 1953 Comp., § 9-13-19, enacted by Laws 1959, ch. 190, § 5; 1973, ch. 247, § 4; 1977, ch. 258, § 8; 1989, ch. 204, § 14.

Cross-references. - As to Disaster Succession Acts, see Article 11 of this chapter.

The 1989 amendment, effective July 1, 1989, substituted "emergency planning and coordination bureau" for "civil emergency preparedness division" in Subsection A.

§ 12-10-5. Local civil emergency preparedness.

The governing bodies of the political subdivisions of the state are responsible for the civil emergency preparedness of their respective jurisdictions. Each political subdivision is authorized to establish, by ordinance or resolution, a local office of civil emergency preparedness as an agency of the local government, and responsible to the governing body, in accordance with the state civil emergency preparedness plan and program.

Every local coordinator of civil emergency preparedness shall be appointed by the governing body, subject to the approval of the state director and such local coordinator shall have direct responsibility for carrying out the civil emergency preparedness program of the political subdivision. He shall coordinate the civil emergency preparedness activities of all local governmental departments and agencies, and shall maintain liaison with and cooperate with civil preparedness agencies and organizations of other political subdivisions and of the state government. Each local organization shall perform civil emergency preparedness functions within the territorial limits of the political subdivision within which it is organized.

History: 1953 Comp., § 9-13-20, enacted by Laws 1959, ch. 190, § 6; 1973, ch. 247, § 5.

§ 12-10-6. Mutual aid agreements.

Each political subdivision may, in cooperation with other public and private agencies within the state, enter into mutual aid agreements for reciprocal civil emergency preparedness aid and assistance.

Such agreements shall be consistent with the state civil emergency preparedness plan, and in time of emergency it shall be the duty of each local civil emergency preparedness organization to render assistance within their capabilities and in accordance with the provisions of the program and plan promulgated by the civil emergency preparedness division.

History: 1953 Comp., § 9-13-21, enacted Laws 1959, ch. 190, § 7; 1973, ch. 247, § 6; 1977, ch. 258, § 9.

Division authority not dependent upon local school authorities. - Though close cooperation with school authorities is advisable and not to be discouraged whenever the protection of pupils may be served, the duties and responsibilities of the office of civil defense (now civil emergency preparedness division) are in no way dependent on or limited by those of the schools. 1970 Op. Att'y Gen. No. 70-9.

§ 12-10-7. Authority to make appropriations and accept aid.

A. Each political subdivision of the state shall have the power to make appropriations in the manner prescribed by law and subject to the limitations of the law, for the payment of expenses of civil emergency preparedness.

B. Whenever the federal government or any agency or officer thereof shall offer to the state or any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of civil emergency preparedness, the state, acting through the governor, or the political subdivision, acting with the consent of

the governor, may accept the offer and may authorize any officer of the state or of the political subdivision, to receive the aid and assistance.

C. Whenever any private person, firm or corporation shall offer to the state, or to any political subdivision thereof, any aid or assistance for civil emergency preparedness, the state or the political subdivision shall be authorized to accept the aid or assistance, subject to the provisions of this section.

History: 1953 Comp., § 9-13-22, enacted by Laws 1959, ch. 190, § 8; 1973, ch. 247, § 7.

If aid from federal government allowable, county may accept. - This section authorizes each political subdivision of the state to make appropriations for the payment of expenses of civil and defense mobilization (now civil emergency preparedness) and further authorizes the political subdivision with the consent of the governor to accept federal aid. Thus, if the aid from the federal government is allowable, a city, with the consent of the governor may accept it. 1959-60 Op. Att'y Gen. No. 59-143.

No separate checking account when county treasurer disbursing agent. - Where the county treasurer is the disbursing agent for normal transactions handled by a local county civil defense agency, the latter may not maintain a separate checking account for public funds of such agency. 1965 Op. Att'y Gen. No. 65-51.

§ 12-10-8. Civil liability; limited.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of his real estate or premises for the purpose of sheltering persons during an actual or impending enemy attack or other disaster shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about the real estate or premises, or for the loss of, or damage to the property of such person, providing said premises have been approved either in whole or in part by the proper civil emergency preparedness authorities for such purpose.

History: 1953 Comp., § 9-13-22.1, enacted by Laws 1963, ch. 193, § 1; 1973, ch. 247, § 8.

§ 12-10-9. Existing services and facilities to be utilized by agency.

The governor, the director of the technical and emergency support division of the department of public safety and the governing bodies of the political subdivisions of the state are directed to utilize, in carrying out the provisions of the State Civil Emergency Preparedness Act [12-10-1 to 12-10-10 NMSA 1978], the services, equipment, supplies

and facilities of existing departments, offices and agencies of the state and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all departments, offices and agencies thereof are directed to cooperate with and extend their services and facilities to the governor or to the director or to the local coordinators of civil emergency preparedness throughout the state upon request.

History: 1953 Comp., § 9-13-23, enacted by Laws 1959, ch. 190, § 9; 1973, ch. 247, § 9; 1989, ch. 204, § 15.

The 1989 amendment, effective July 1, 1989, inserted "of the technical and emergency support division of the department of public safety" near the beginning of the section, substituted "offices" for "officers" near the middle of the section, and deleted "state" preceding "director" near the end of the section.

§ 12-10-10. Enforcement of executive orders and regulations.

A. It is the duty of all political subdivisions of the state and their coordinators of the civil emergency preparedness programs appointed pursuant to the provisions of the State Civil Emergency Preparedness Act [12-10-1 to 12-10-10 NMSA 1978] to comply with and enforce all executive orders and regulations made by the governor or under his authority pursuant to law.

B. Political subdivisions shall meet all state and federal requirements before becoming eligible to participate in state and federal civil emergency preparedness assistance programs. They must comply with all state and federal regulations and procedures, and shall be removed from participation in said assistance programs by the director for failure to comply with such regulations and procedures or to maintain their eligibility in accordance with prescribed requirements.

History: 1953 Comp., § 9-13-24, enacted by Laws 1959, ch. 190, § 10; 1973, ch. 247, § 10.

Article 11

Disaster Acts

Part 1

Disaster Succession Act

Sec.

Part 1

DISASTER SUCCESSION ACT

§ 12-11-1. Short title.

This act [12-11-1 to 12-11-10 NMSA 1978] may be cited as the "Disaster Succession Act."

History: 1953 Comp., § 4-18-1, enacted by Laws 1959, ch. 137, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 63A Am. Jur. 2d Public Officers and Employees §§ 135 to 137.
67 C.J.S. Officers and Public Employees §§ 74 to 79.

§ 12-11-2. Declaration of policy.

The legislature declares that the possibility of an enemy attack of unprecedented destructiveness made possible by recent technological developments, and which may result in the death or inabiilty [inability] to act on the part of a large number of the officers of the executive and judicial branches of state and local government, make it necessary to assure the continuity and effective operation of the executive and judicial offices of state and local government by providing for advance naming of officers to fill temporarily vacancies in certain offices, and that it is the legislative intent to provide that continuity in the Disaster Succession Act [12-11-1 to 12-11-10 NMSA 1978].

History: 1953 Comp., § 4-18-2, enacted by Laws 1959, ch. 137, § 2.

Cross-references. - As to the State Civil Emergency Preparedness Act, see 12-10-1 to 12-10-10 NMSA 1978.

§ 12-11-3. Definitions.

As used in the Disaster Succession Act [12-11-1 to 12-11-10 NMSA 1978]:

A. "attack" means any hostile action by an enemy of the United States which is intended to and physically damages citizens or property in the United States;

B. "disaster" means damage or injury, caused by enemy attack, to persons or property in this state of such magnitude that a state of martial law is declared in the state and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state;

C. "unavailable" means unable, because of death, disability or presumption of death raised by absence from usual place of domicile for unknown causes, to exercise the powers and discharge the duties of the office. The appearance of the officer at his place of office will automatically disqualify a disaster successor, and remove the unavailability of the officer;

D. "deputy" means a deputy, assistant or subordinate officer who is authorized under ordinary circumstances to exercise the powers and duties of an office;

E. "disaster successor" means a person possessing the qualifications required at [of] the office, designated pursuant to the Disaster Succession Act to act in the stead of an officer who is unavailable during the period of a disaster.

History: 1953 Comp., § 4-18-3, enacted by Laws 1959, ch. 137, § 3.

§ 12-11-4. Disaster successors to the governor.

If the governor and all of his constitutional successors are unavailable, the holders of the following offices shall be the disaster successors in the order named:

A. the attorney general;

B. the state auditor;

C. the commissioner of public lands;

D. the state treasurer.

History: 1953 Comp., § 4-18-4, enacted by Laws 1959, ch. 137, § 4.

Cross-references. - As to constitutional successors to governor, see N.M. Const., art. V, § 7.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States §§ 87 to 90.

§ 12-11-5. Disaster successors to other state executive offices.

The governor shall, pursuant to his constitutional powers to appoint officers, whose appointment is not otherwise provided for, designate three disaster successors to each state executive office and specify their order of succession.

History: 1953 Comp., § 4-18-5, enacted by Laws 1959, ch. 137, § 5.

Cross-references. - As to governor's appointive power generally, see N.M. Const., art. V, § 5.

§ 12-11-6. Disaster successors to local offices.

Officers of political subdivisions who have authority to fill vacancies in local offices shall designate three disaster successors to the powers and duties of each such office and specify their order of succession.

History: 1953 Comp., § 4-18-6, enacted by Laws 1959, ch. 137, § 6.

§ 12-11-7. [Disaster successors for members of supreme court and judges of district courts.]

The governor shall designate for each member of the supreme court and each judge of the district court three disaster successors and specify their order of succession.

History: 1953 Comp., § 4-18-7, enacted by Laws 1959, ch. 137, § 7.

§ 12-11-8. Formalities of taking office.

Disaster successors shall prior to assumption of the duties and powers of the position take such oath as is required by law, and shall as soon as possible thereafter comply with any other provision of law relative to the formalities of taking office, provided that their inability due to existing circumstances to comply with such other formalities shall not prevent their acting until the formalities can be had.

History: 1953 Comp., § 4-18-8, enacted by Laws 1959, ch. 137, § 8.

§ 12-11-9. Period during which disaster successors may act.

Disaster successors may act in the office to which appointed only:

A. in case of a disaster declared by the chief executive officer of the United States, and the chief executive officer of the state, and as long as a state of martial law is declared to exist or until a duly elected or appointed legislature, fulfilling all constitutional requirements, declares by joint resolution that the disaster emergency period has ended; and

B. the officer or authorized deputy in whose stead they are acting is unavailable; and

C. any disaster successors who are ahead of them in the line of succession to the office are unavailable; and

D. a successor to the office has not been selected and qualified as provided by law, other than the Disaster Succession Act [12-11-1 to 12-11-10 NMSA 1978].

History: 1953 Comp., § 4-18-9, enacted by Laws 1959, ch. 137, § 9.

§ 12-11-10. Filing; notice.

Each appointing power, designating disaster successors for state officers shall file the

designations and any changes thereto with the secretary of state. Each appointing power designating disaster successors for district, county, municipal or precinct or other local offices shall file the designations with the county clerk of the county in which the office is located. The designation or change shall be effective when so filed. The appointing power shall also notify the designee of his designation and the order and designation of all other alternates to the office.

History: 1953 Comp., § 4-18-10, enacted by Laws 1959, ch. 137, § 10.

Severability clauses. - Laws 1959, ch. 137, § 11, provides for the severability of the act if any part or application thereof is held invalid.

Part 2

LEGISLATIVE DISASTER SUCCESSION ACT

§ 12-11-11. Short title.

This act [12-11-11 to 12-11-18 NMSA 1978] may be cited as the "Legislative Disaster Succession Act."

History: 1953 Comp., § 4-19-1, enacted by Laws 1959, ch. 138, § 1.

§ 12-11-12. Declaration of policy.

The legislature declares that the possibility of an enemy attack of unprecedented destructiveness made possible by recent technological developments, and which may result in the death or inability to act on the part of a large number of the membership of the legislature make [makes] it necessary to assure the continuity and effective operation of the legislature by providing for emergency advance naming of persons to temporarily fill vacancies in the legislature, and that it is the legislative intent to provide that continuity in the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978].

History: 1953 Comp., § 4-19-2, enacted by Laws 1959, ch. 138, § 2.

Cross-references. - As to the State Civil Emergency Preparedness Act, see 12-10-1 to 12-10-10 NMSA 1978.

§ 12-11-13. Definitions.

As used in the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978]:

A. "attack" means any hostile action by an enemy of the United States which is intended to and physically damages citizens or property in the United States;

B. "disaster" means the damage or injury, caused by enemy attack, to persons or property in this state of such magnitude that a state of martial law is declared to exist in this state, and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state;

C. "unavailable" means unable because of death, disability or presumption of death raised by absence from usual place of domicile for unknown causes, to exercise the powers and discharge the duties of a member of the legislature. The appearance of the member at a session will automatically disqualify a disaster successor, and remove the unavailability of the member;

D. "disaster successor" means a person possessing the qualifications required of a member, designated pursuant to the Legislative Disaster Succession Act, to act for a member who is unavailable during the period of disaster emergency.

History: 1953 Comp., § 4-19-3, enacted by Laws 1959, ch. 138, § 3.

§ 12-11-14. Designation of disaster successors to legislators.

The county commission of each county shall designate five disaster successors for each legislator elected or appointed from that county, and specify their order of succession. The commission shall have the power to change designations at will. The designation of disaster successors shall not affect the powers of the commission to fill vacancies.

History: 1953 Comp., § 4-19-4, enacted by Laws 1959, ch. 138, § 4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d States, Territories and Dependencies § 44.
81A C.J.S. States § 43.

§ 12-11-15. Filing designations.

The county commission shall file with the secretary of state and the county clerk, its designations of disaster successors for legislators, and any subsequent changes, and shall notify the designees of their designation and the order and designation of all alternates to the office. Designations shall be effective when filed with the secretary of state.

History: 1953 Comp., § 4-19-5, enacted by Laws 1959, ch. 138, § 5.

§ 12-11-16. Oath of office; assumption of office.

Disaster successors shall take such oath as is required by law prior to assumption of the duties and powers of the position, and serve as legislators subject to the provisions of the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978].

History: 1953 Comp., § 4-19-6, enacted by Laws 1959, ch. 138, § 6.

§ 12-11-17. Quorum and vote requirements.

During the period of a disaster emergency, the quorum requirements for convening the legislature shall be one-third of the members, and all special or regular majorities shall be based on members present. Provided further that legislative action taken without the requisite members present, or without the majority required under the constitution shall be effective only for the period of the disaster.

History: 1953 Comp., § 4-19-7, enacted by Laws 1959, ch. 138, § 7.

§ 12-11-18. Period during which disaster successors may act.

Disaster successors may act as members of the legislature only:

A. in case of a disaster emergency declared by the chief executive officer of the United States and the chief executive officer of the state, and as long as a state of martial law is declared to exist, or until a duly elected or appointed legislature, fulfilling all constitutional requirements, declares by joint resolution that the disaster emergency period has ended; and

B. the member in whose stead they are acting is and remains unavailable; and

C. any disaster successor [successors] who are ahead of them in the line of succession are, and remain unavailable; and

D. a successor to the office has not been selected and qualified as provided by law other than the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978].

History: 1953 Comp., § 4-19-8, enacted by Laws 1959, ch. 138, § 8.

Part 3

DISASTER LOCATION ACT

§ 12-11-19. Short title.

This act [12-11-19 to 12-11-22 NMSA 1978] may be cited as the "Disaster Location Act."

History: 1953 Comp., § 4-21-1, enacted by Laws 1961, ch. 19, § 1.

§ 12-11-20. Definitions.

As used in this act [12-11-19 to 12-11-22 NMSA 1978]:

A. "attack" means any hostile action by an enemy of the United States which is intended to and physically damages citizens or property in the United States; and

B. "disaster" means the damage or injury, caused by enemy attack, to persons or property in this state of such magnitude that a state of martial law is declared to exist in this state and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state.

History: 1953 Comp., § 4-21-2, enacted by Laws 1961, ch. 19, § 2.

§ 12-11-21. Seat of state government.

A. Whenever a disaster makes it imprudent or impossible to conduct the affairs of state government at its seat in Santa Fe, the governor may proclaim temporary disaster locations for the seat of state government at any place he deems advisable, either inside or outside of the state. The governor may issue necessary orders for orderly transition of the affairs of government to any temporary disaster location, which remains the seat of state government until the legislature establishes a new location or until the disaster is declared ended by the legislature and the seat is returned to its normal location in Santa Fe.

B. Any official act or meeting required to be performed at the seat of state government is valid when performed at a temporary disaster location under this section.

History: 1953 Comp., § 4-21-3, enacted by Laws 1961, ch. 19, § 3.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States § 38.

§ 12-11-22. Seats of local governments.

A. Whenever a disaster makes it imprudent or impossible to conduct the affairs of any local government at its regular location, the governing body may meet at any place, inside or outside the limits of the political subdivision, at the call of the presiding officer or any two members of the governing body, and designate by ordinance a temporary disaster location of the local government, which remains the seat of the local government until the governing body establishes a new location or until the disaster is declared ended by the legislature and the seat is returned to its normal location.

B. Any official act or meeting required to be performed at the seat of the local government is valid when performed at a temporary disaster location under this section.

History: 1953 Comp., § 4-21-4, enacted by Laws 1961, ch. 19, § 4.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 28, 44 to 49.
20 C.J.S. Counties § 61; 62 C.J.S. Municipal Corporations § 392.

Article 12

Energy Emergency Powers

§ 12-12-1. Short title.

This act [12-12-1 to 12-12-9 NMSA 1978] may be cited as the "Energy Emergency Powers Act."

History: Laws 1980, ch. 107, § 1.

Cross-references. - For Energy, Minerals and Natural Resources Department Act, see 9-5A-1 NMSA 1978 et seq. For Research and Development Act, see 9-15-16 NMSA 1978 et seq.

§ 12-12-2. Definitions.

As used in the Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978]:

A. "energy emergency" means an existing or imminent domestic, regional or national shortage of energy resources which may result in the curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy or have a severe impact on the health, safety and general welfare of the citizens of this state unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy resources among users;

B. "energy resource" means petroleum or other liquid fuels, natural or synthetic fuel gas, electricity, coal, synthetic fuel or its components;

C. "energy supply alert" means an anticipated shortfall of available energy resources on a national, regional or local basis which foreseeably could result in an energy emergency unless action is taken to reduce energy uses by the state, its agencies and political subdivisions; and

D. "person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency or any other entity, public or private, however organized.

History: Laws 1980, ch. 107, § 2.

§ 12-12-3. Energy supply alert; energy emergency; powers of the governor.

A. The governor, after making written findings of the grounds upon which he bases his decision, may issue a declaration that an energy supply alert exists. The governor shall publish his declaration and the findings upon which it is based along with any orders issued pursuant to the declared alert. After declaring that the state or any region thereof is in an alert status the governor may issue executive orders directed at state agencies and political subdivisions of the state. Such orders may include but are not limited to the following provisions:

(1) imposition of restrictions on any wasteful, inefficient or nonessential use of energy resources;

(2) ordering changes in operation schedules and working hours;

(3) curtailing the use of land vehicles, watercraft and aircraft; and

(4) such other provisions as are deemed necessary to reduce the consumption of energy resources.

B. The governor, upon termination of an energy supply alert or after determining that the declaration of an energy supply alert would be insufficient to meet the situation facing the people of New Mexico and after making written findings of the grounds upon which he bases his decision that an energy emergency exists, which findings shall be provided the presiding officer of each house of the legislature, may issue a declaration that such an emergency exists. Upon the issuance and publication of such a declaration and the written determination of need, the governor may issue executive orders and may take such steps as are necessary and appropriate to carry out the provisions of the Energy

Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978] and generally to protect the peace, health, safety and welfare and preserve the lives and property of the people of this state. Executive orders may include but are not limited to the following provisions:

(1) imposition of restrictions on any wasteful, inefficient or nonessential use of energy resources;

(2) allocation of available supplies of energy resources among areas, users, persons or categories of persons or users. In allocating available resources the governor shall give priority to energy resource use essential to public health and safety, and shall thereafter attempt to allocate the remaining supply equitably;

(3) regulation of the days and times when energy resources may be sold to end users and the amounts which may be sold or purchased;

(4) regulation of the hours and days during which nonresidential buildings may be open and the temperature at which they may be maintained; and

(5) such provisions as may be necessary to assure that adequate transportation facilities exist to supply the energy needs of this state.

C. The governor shall review the requests of the chief executive of political subdivisions that the governor issue orders to require specific actions to be taken within those subdivisions. The governor may grant those requests he deems in the best interest of the state and may delegate to the political subdivisions such powers as he determines would best be vested in local entities.

D. Executive orders issued pursuant to this section shall take effect three days after publication in a manner designed to assure statewide notification. In addition, executive orders issued hereunder are exempt from the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1980, ch. 107, § 3.

§ 12-12-4. Delegation; administration and enforcement.

Notwithstanding any other provision of law, the governor or his designee may administer and enforce energy conservation measures under a delegation of authority pursuant to Title 2 of the federal Emergency Energy Conservation Act of 1979, 42 U.S.C. Sections 8501 through 8541 (1979).

History: Laws 1980, ch. 107, § 4.

§ 12-12-5. Termination [of emergency or alert].

Whenever the governor is satisfied that any energy emergency or energy supply alert no longer exists, he shall terminate the emergency or alert by another declaration. The declaration shall be published in such newspapers of the state and posted in such places as the governor deems appropriate.

History: Laws 1980, ch. 107, § 5.

Cross-references. - As to publication of legal notices, see 14-11-1 NMSA 1978 et seq.

§ 12-12-6. Legislative extension; reduction; suspension.

In no event shall any executive order issued pursuant to the powers granted in Subsection B of Section 3 [12-12-3 NMSA 1978] of the Energy Emergency Powers Act continue in effect for more than one hundred twenty days unless extended, restricted or suspended by joint resolution of the legislature in regular, extraordinary or special session.

History: Laws 1980, ch. 107, § 6.

§ 12-12-7. Penalties and enforcement.

Any person who violates any provision of the Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978] or any provision of an executive order issued thereunder is, upon conviction, guilty of a misdemeanor. Every day of violation after notice of violation shall constitute a separate offense. The attorney general shall be responsible for prosecuting violations charged under the Energy Emergency Powers Act and may petition the district court for injunctive relief to prevent any future violation of that act.

History: Laws 1980, ch. 107, § 7.

Cross-references. - As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

§ 12-12-8. Repealed.

Repeals. - Laws 1983, ch. 39, § 1, repeals 12-12-8 NMSA 1978, relating to the July 1, 1983 termination of the Energy Emergency Powers Act.

Laws 1983, ch. 39, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

§ 12-12-9. Liberal interpretation.

The Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978] shall be liberally construed to carry out its purpose.

History: Laws 1980, ch. 107, § 9.

Article 13

New Mexico Border Act

§ 12-13-1. Short title.

This act [12-13-1 to 12-13-7 NMSA 1978] may be cited as the "New Mexico Border Act."

History: Laws 1981, ch. 28, § 1.

§ 12-13-2. Legislative intent and purpose.

It is the intent of the legislature and the purpose of the New Mexico Border Act [12-13-1 to 12-13-7 NMSA 1978] to:

A. encourage the continuity of a cordial and cooperative relationship between the state of New Mexico, the Republic of Mexico and the state of Chihuahua by recognizing a common boundary and mutual interests;

B. provide information exchange services between New Mexico and the state of Chihuahua to enhance industrial and economic advancement and promote development of twin plant industries to the mutual benefit of the state of New Mexico and the Republic of Mexico.

History: Laws 1981, ch. 28, § 2.

§ 12-13-3. Definitions.

As used in the New Mexico Border Act [12-13-1 to 12-13-7 NMSA 1978]:

A. "commission" means the New Mexico border commission; and

B. "director" means the director of the New Mexico border commission.

History: Laws 1981, ch. 28, § 3; 1983, ch. 288, § 1.

§ 12-13-4. Commission created; membership; meetings; compensation.

A. The "New Mexico border commission" is created. The commission shall consist of:

(1) seven citizens from New Mexico appointed by the governor; provided that at least one citizen is appointed from each of the following counties: Dona Ana, Hidalgo and Luna; and

(2) the director of the New Mexico border commission who shall be appointed by the governor.

B. The seven appointed members of the commission shall serve for staggered terms of four years allowing the initial appointments as follows: one member for one year or less with a term expiring December 31; two members for two years with a term expiring December 31; two members for three years with a term expiring December 31; and two members for four years with terms expiring December 31. Thereafter, terms shall be for four years. The director shall serve at the pleasure of the governor.

C. The commission shall keep records of its proceedings.

D. The commission shall convene upon the call of the majority of its members or the chairman and shall meet a minimum of once every three months.

E. The commission shall appoint a chairman from the membership of the commission. The commission shall also elect a vice chairman and any other officers it deems necessary from its members.

F. Each member of the commission shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] during the performance of official duties and shall receive no other compensation, perquisite or allowance.

History: Laws 1981, ch. 28, § 4; 1983, ch. 288, § 2.

Compiler's notes. - The governor, in 1983, vetoed the former last sentence in Subsection B, which read "Not more than three members at the time of their appointment shall be members of the same political party."

§ 12-13-5. Powers and duties.

The commission shall serve as a policy and advisory body to the governor and in this capacity shall perform the following duties:

A. create avenues of communication between New Mexico and Chihuahua and the Republic of Mexico concerning cultural, artistic, economic and industrial affairs;

B. confer with New Mexican and Mexican cultural, artistic, economic and industrial leaders to best determine the methods and procedures that will most effectively carry out the provisions of the New Mexico Border Act [12-13-1 to 12-13-7 NMSA 1978];

C. promote legislation that will further the goals of the commission; and

D. communicate with other international commissions of this type that have proved successful for other states and nations.

History: Laws 1981, ch. 28, § 5.

Cross-references. - As to office of cultural affairs, see 9-6-7 NMSA 1978 et seq.

§ 12-13-6. Staff support and funding provisions.

A. The joint border research institute at New Mexico state university shall provide staff support necessary to aid the commission in fulfillment of its duties pursuant to Subsection A of Section 12-13-2 NMSA 1978.

B. The center for business research and service at New Mexico state university is authorized to provide staff support necessary to aid the commission in fulfillment of its duties pursuant to Subsection B of Section 12-13-2 NMSA 1978.

C. The joint border research institute and the center for business research and service at New Mexico state university are empowered and authorized to accept and solicit federal, state and private grants for the purpose of carrying out the provisions of the New Mexico Border Act [12-13-1 to 12-13-7 NMSA 1978].

D. Notwithstanding the provisions of Subsections A through C of this section, the commerce and industry department [economic development and tourism department] shall provide staff support necessary to aid the commission in fulfillment of its duties concerning economic and industrial affairs pursuant to Section 12-13-5 NMSA 1978.

History: Laws 1981, ch. 28, § 6; 1983, ch. 288, § 3.

Commerce and industry department. - The commerce and industry department, referred to in Subsection D, was abolished by Laws 1983, ch. 297, § 33. Laws 1983, ch. 297, § 4, creates the economic development and tourism department, the apparent successor to the former department in the area of economic and industrial affairs. See 9-15-4 NMSA 1978 and notes thereto.

§ 12-13-7. Conflict of interest.

No member of the commission who performs any function or duty under the New Mexico Border Act [12-13-1 to 12-13-7 NMSA 1978] may have a direct or indirect financial interest in any activity undertaken by the commission.

History: Laws 1981, ch. 28, § 7.

Cross-references. - For Conflict of Interest Act, see 10-16-1 NMSA 1978 et seq.

Article 14

New Mexico Diamond Jubilee and Bicentennial Commission

(Repealed by Laws 1986, ch. 83, § 2E.)

Sec.
12-14-1 to 12-14-7. Repealed.

§§ 12-14-1 to 12-14-7. Repealed.

Repeals. - Laws 1986, ch. 83, § 2E repeals 12-14-1 to 12-14-7 NMSA 1978, as enacted by Laws 1986, ch. 83, relating to the diamond jubilee and bicentennial commission, effective December 31, 1989. For provisions of former article, see 1988 Replacement Pamphlet.